

1559
No. 3680

United States

1553

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED, MOR-
RIS ROSENBLEDT, and FRED HARRISON,
Defendants in Error,

VOLUME II.

(Pages 289 to 519, Inclusive.)

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

FILED

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F. D. MONCKTON,
CLERK

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(Testimony of Fred Harrison.)

Q. Could you give us offhand what would be the reasonable cost of changing the front of the building?

O. I couldn't without going through the specifications.

Q. Something was said about its being an immaterial matter. I want to know whether it is a material matter?

Mr. CASTLE.—Objected to, as he says he cannot tell without going through the specifications.

Mr. PETERS.—I want to know if it was a material change.

The COURT.—Ask the question.

A. This was a more elaborate design than the present building was, and naturally it would cost more: the material, work and so forth would cost more. I don't know any reason why it was changed.

(Moved that the last part of the answer be stricken. Motion granted.) [242]

Q. Did I ask you on direct examination as to when you signed this lease to the Honolulu Skating Rink?

A. No, sir.

Q. When did you sign that?

(Same objection. Same ruling. Exception granted.)

A. On the 16th of October, 1914.

(By A. L. CASTLE, Esq.)

Q. Do you know the amount of excavation required there for that cement work you are speaking of? A. I don't.

Q. Do you know, for instance, how deep the exca-

(Testimony of Fred Harrison.)

vation was at the front of the building?

A. At the present time?

Q. No. When this concrete work was put in what depth was it necessary to excavate to?

A. I can't say. I know there was more excavation done there on the lot.

Q. After the completion of the building the building was used as a skating rink, was it not?

A. It was.

Q. For how long?

A. I couldn't say. I should judge three or four months.

Q. People did use that for a skating rink?

A. Yes.

Q. You stated on direct that below the surface cement, below the topping, you could find no cement at all. Was that statement correct?

A. That is in portions of the work.

Q. How would you account for its holding up?

A. The topping was on top of dirt. It will stay there if made of rich enough material. The topping carries itself. At the same time it was hollow underneath and it sounds like a bell when you tap it. [243]

Q. Part of it was all right?

A. Part of it was all right, and parts were hollow.

Q. What would you consider a fair value for excavating at that place per cubic yard?

(Objected to as not proper cross-examination.)

The COURT.—Objection sustained upon the

(Testimony of Fred Harrison.)

ground that he doesn't know what excavation was made.

(Exception.)

Q. Do you know whether any excavation was made?

A. There was some excavation; there was some excavation for concrete, piers,—to carry the piers.

Q. Do you know whether any excavation was made for this concrete work you speak of?

A. There was more or less leveling off, I suppose.

Q. Would that include excavation?

A. That would be considered probably as excavation. The lot was always way below the sidewalk, so there couldn't have been very much excavation. There might be filling in some places, and cuttings.

Q. What would you consider a fair price for the excavation?

(Objected to as not proper cross-examination. No ruling.)

A. I suppose it depends on the kind of material you are excavating. That material was very soft dirt and worth about 25 or 30¢ a cubic yard.

Q. What would you say as to the filling?

(Objected to as assuming a fact not in evidence, and not proper cross-examination.)

The COURT.—I don't see any object of the examination. What possible use does it do the Court to know it costs 25¢ or \$25 when he doesn't know the amount excavated?

Mr. CASTLE.—We can show the amount of exca-

(Testimony of Fred Harrison.)

vation that was done and a fair value for that work.

[244]

The COURT.—Can't your own witness prove the amount it cost as an actual fact?

Mr. CASTLE.—It was done under a complete contract. The cement contract was made for \$1,200, the entire job.

Mr. PETERS.—The situation is, if they put in improper cement, which would not live up to the specifications, it would not make any difference how much excavation they did. We are being charged on the value of the enhanced value of the *res*.

The COURT.—Objection sustained.

(Exception.)

Redirect Examination.

By E. C. PETERS, Esq.—I would ask permission to ask one question on redirect examination which I should have asked on direct. You called to my attention the posts which held up the ceiling,—upon what were they set?

A. Upon these concrete piers.

Q. What were the depths of the piers?

A. I could not tell the depth because I never went over when the building was being constructed.

Q. How were those posts set up?

A. We were afraid the roof was going to fall down a month ago and we had to go over and underpin the girders.

Q. What was the difficulty?

(Testimony of Fred Harrison.)

A. It was on account of the lot adjoining,— it was higher grade than the one where the floor was, and naturally the moisture from this lot drained to the bottom of these posts and dry rot set in. It is a wonder the whole thing didn't come down.

Q. What should have been done to protect the post?

A. The foundation should have been taken about the floor, so no moisture could have got in.

Q. How much are affected? [245]

A. There are two posts so far, the main supports and the roof members. It is a very dangerous proposition.

Q. What effect has that had upon the roofing?

A. It caused the girders to get out of level and the members to sag, and we had to use jacks to jack it up to get new posts in there. That has been done in the last 3 or 4 months.

Q. What was the reasonable cost of that?

A. I done that work myself in the first instance, and Mr. Walker did this work a couple of weeks ago, and he has not rendered his bill.

Q. What would be the reasonable cost?

A. As far as raising the roof was concerned, I should say about fifty dollars.

Q. What would be the effect on the roof?

A. I cannot say. All I know is it caused a sag in the girders.

Q. Over what area of the roof is that sag apparent?

(Testimony of Fred Harrison.)

A. It was just where it had gone down with the girders.

Q. How large an area in comparison with this courtroom?

A. I should say about 60 feet in length.

Q. And over what width?

A. Just the girder itself.

Q. How about the roof braces?

A. We had to lift the whole thing up to get it back to its place again.

Recross-examination.

(By A. L. CASTLE, Esq.)

Q. When was that done?

A. Mr. Walker did that job in the last two weeks. We only found it out in examining the floor. About three months ago I put in supports myself under one of them. I was surprised when I went over there and saw the other post in the same condition.

Mr. CASTLE.—I move to strike out the answer.
[246]

The COURT.—It may be stricken.

Mr. PETERS.—We are ready to rest with this request, that your Honor look at the maple flooring and concrete posts in the building. I should like very much for your Honor to see them. This is a matter which is very difficult to describe to the Court, and even if there be an over exaggeration, I should like your Honor to satisfy yourself by an ocular demonstration.

The COURT.—I am sufficiently familiar with that

(Testimony of Fred Harrison.)

class of work to know how floor are usually laid.

Mr. PETERS.—Your Honor has not seen this particular skating rink, and it would certainly be an eye-opener to see the situation up there. The building was finished in November, 1914, for which they had seven thousand dollars. The cement work is valueless, and the maple floor is rotted and disintegrated so that it will in places not support the weight of an ordinary person. If the Court will go up and see if I should like to have the Cout inspect it.

The COURT.—We will proceed with the case now and if we get through with that I can go to see it.

Mr. PETERS.—We rest.

**Testimony of Wong Wong, for Plaintiff (Recalled
in Rebuttal).**

WONG WONG was called as a witness in rebuttal on behalf of the plaintiff, having previously been sworn, and testified as follows (through the official Chinese interpreter):

Direct Examination.

(By A. L. CASTLE, Esq.)

Q. Who was the contractor that did the cement work?

Mr. PETERS.—Objected to as incompetent, irrelevant and immaterial and not proper rebuttal.

(Argument. Objection overruled.)

A. Namura.

(Testimony of Wong Wong.)

Q. Where is Namura now?

A. He is dead.

Q. Did he have a foreman? [247]

A. He also has gone back to Japan. The foreman's name was Fulga.

Q. He is not here now? A. He is not.

Q. When this cement work was going on how much of the time did you spend there, if any?

A. I spent three or four hours every day there.

Q. Did you see them doing this cement work?

A. I did.

Q. Do you know what the specifications were of the cement work? A. Yes.

Q. At the time you were there how were they doing that work?

Mr. PETERS.—Objected to, as it is all a part of the case in chief.

They went into it and put the architect on the stand and he accepted the work, and now they proceed to go back over the entire issues again and have the contractor testify.

The COURT.—I think he has already testified to these facts. That is not rebuttal.

(Exception.)

Q. When you made demand on Ikeda, did he or did he not say anything to you about having resigned as treasurer?

Mr. PETERS.—Objected to as incompetent, irrelevant and immaterial and not proper rebuttal,—question of demand is all a part of their case in

(Testimony of Fred Ohrt.)

chief. Ikeda has not testified to his having said anything.

The COURT.—Ikeda said he was not treasurer of the company at that time.

(Argument. Objection sustained. Exception.)

(Cross-examination waived.)

Testimony of Fred Ohrt, for Plaintiff (In Rebuttal).

FRED OHRT, a witness called in rebuttal on behalf of the plaintiff, testified as follows:

Direct Examination.

(By A. L. CASTLE, Esq.)

Q. You have already testified you were president of the Honolulu Skating Rink, Limited?

A. Yes. [248]

Q. And during the month of November and December, 1914? A. Yes, sir.

Q. Do you know what position Mr. George Ikeda held, if any, during those months?

A. Mr. Ikeda started as treasurer, and later was voted in as secretary and held that up to the time that his stock was sold. I don't recall the exact date, but surely up to the time shown in the records of this meeting which were kept. Lymer—

Q. Are you able to state whether or not Ikeda was secretary during the month of December, 1914?

A. Yes, he was.

Q. For the whole month? A. Yes.

Cross-examination.

(By E. C. PETERS, Esq.)

Q. Now, how do you come to make that statement,

(Testimony of Fred Ohrt.)

he was secretary in December, 1914? How do you come to make that statement? Have you an independent recollection or have you refreshed your memory? A. I have refreshed my memory.

Q. From what?

A. Reference to the records of the minutes.

Q. Who refreshed your memory in that respect?

A. Mr. Castle.

Q. Where are those minutes? Would you know them again if you saw them? A. Yes, sir.

Mr. PETERS.—Will you produce them, please?

(Counsel for plaintiff hands book to counsel for defendant.)

Counsel hands me here a minute-book. Is this the minute-book that you are referring to? Can't you answer the question "yes" or "no"?

A. I think it was.

Mr. PETERS.—I offer this to be marked for identification.

(Book offered to be marked for identification marked Exhibit — for Identification for Defendant.)

Q. Did you have any independent recollection of it prior to that time? [249]

A. I recall very distinctly Mr. Ikeda's being secretary.

Q. Do you remember as distinctly when it was Mr. Ikeda was sold out at public auction, all his stock was sold out at public auction?

A. I don't remember the exact date, but it was public throughout the Territory, in the papers, and

(Testimony of Fred Ohrt.)

that would be a better record.

Q. I am asking you what recollection you yourself had? A. That is the best record.

Q. I am not going to ask you what the best record is. Will you please answer—the question is as to what your recollection is?

A. What is the question?

Q. When Mr. Ikeda's stock was sold out?

A. I think he was—you mean the date?

Q. When do you think I mean, when I say "when"?

A. It would certainly be before or after, and if you wanted to get down to it I recall the thing being published in the newspapers and that can be located some place.

Q. You have no recollection of it at all yourself?

A. I remember he was secretary.

The COURT.—Answer the question, whether you remember when the stock was sold.

A. I remember the stock being sold.

The COURT.—Do you remember when the stock was sold? A. Not the exact date.

The COURT.—Q. The approximate date?

A. No, sir.

Q. Does this minute-book contain the by-laws of the company? A. No.

Q. Have you seen the minute-book which does contain the by-laws of the company? A. I have.

Q. When and where?

A. There were two of these books, and a bunch of these books were turned over to you, Mr. Peters, for

(Testimony of Fred Ohrt.)

which Mr. Whitney holds the receipt, and I understood that was in your book. [250]

Q. When besides this time have you seen another minute-book belonging to the Honolulu Skating Rink, Limited?

A. A year or more ago.

Q. You haven't seen any other minute-book than this lately? A. Not lately.

Q. Did Mr. Ikeda continue to be secretary of the company after his stock was sold?

A. I don't think he did.

Testimony of Henry C. Hapai, for Plaintiff (In Rebuttal).

HENRY C. HAPAI, was duly called and sworn as a witness for the plaintiff in rebuttal, and testified as follows:

Direct Examination.

(By A. L. CASTLE, Esq.)

Q. What is your business?

A. Registrar of public accounts.

Q. And as such is it your duty to receive the annual exhibits of corporations? A. It is.

Q. Have you in your possession the exhibit of the Honolulu Skating Rink, Limited, for the year ending December 31, 1914? A. I have it here.

Q. Will you produce it, please?

(Witness produces a book.)

Mr. CASTLE.—I offer the book in evidence.

Mr. PETERS.—Objected to as incompetent, irrelevant and immaterial, not tending to prove or dis-

(Testimony of Henry C. Hapai.)

prove any of the issues in the case.

The COURT.—It may be received.

Mr. PETERS.—Exception. I should like to have it here for surrebuttal.

The COURT.—You can get it from Mr. Hapai later on.

Mr. CASTLE.—I have an automobile out looking for Mr. Coombs. Ikeda testified he did not know Mr. Coombs, and never met him, and Mr. Coombs testified that he knows Mr. Ikeda very well. It is very [251] important.

The COURT.—Well, if it is important you should have had him here now.

Mr. CASTLE.—The Judge won't allow any further time to get Mr. Coombs?

The COURT.—You can put him on if he comes before counsel on the other side finishes.

Mr. PETERS.—We rest, with the exception of Mr. Coombs.

Mr. CASTLE.—Yes.

**Testimony of Elmer C. Schwartzburg, for Defendants
(In Surrebuttal).**

ELMER C. SCHWARTZBURG was duly called and sworn as a witness for the defendant, in surrebuttal, and testified as follows:

Direct Examination.

(By E. C. PETERS, Esq.)

Q. What is your business?

A. Auctioneer for the James F. Morgan Company.

(Testimony of Elmer C. Schwartzburg.)

Q. Did you in the month of December, 1914, sell any stock of George S. Ikeda's? A. Yes, I did.

Q. At whose request?

Mr. CASTLE.—Objected to as immaterial.

Mr. PETERS.—The situation is to show that this corporation exhibit filed on the 2d day of April, 1915, by Fred Ohrt as a return for the Honolulu Skating Rink, Limited, declaring Ikeda to be the secretary and also declaring him to hold three thousand shares of the company, is untrue; that he had ceased to be a stockholder of the company. This is to show that this same stock was sold at public auction.

A. That is, as far as I can remember.

The COURT.—I don't think the evidence is admissible.

Mr. PETERS.—Exception. We now offer to prove that the James F. Morgan Company, at the request of the Honolulu Skating Rink Company, [252] Limited, and Mr. Ohrt, its president, on the 28th day of December, 1914, at 10 o'clock in the forenoon of that day, sold all George Ikeda's common stock Number 2, sold to George H. LeClaire, common stock Number 8-A. There was no bid. Preferred stock certificate Number 1, 1900 shares, no bid; preferred stock for 100 shares, no bid; preferred stock for 100 shares sold to George H. LeClaire, and preferred stock Number 8, no bid.

Mr. CASTLE.—We make the same objection, and now add to it that it now refers to December 28th, which was after the demand made.

The COURT.—This is to show that there was no bid for it. He certainly held after December 28th.

Mr. PETERS.—Comparison shows that there is an error, in that record, that he didn't hold three thousand shares. We rest.

(Argument.)

The COURT.—I will take the matter under consideration.

(Adjourned.)

We hereby certify the foregoing to be a full, true and correct transcript of our shorthand notes taken in the above-entitled case.

Honolulu, April 19, 1919.

(Sgd.) O. P. SOARES,

(Sgd.) H. R. JORDAN,

Official Reporters. [253]

[Endorsement]: L. 8145. 434. Circuit Court of the First Circuit, Territory of Hawaii. Wong Wong vs. Honolulu Skating Rink, Ltd., et al. Transcript of Testimony. (No. 2.) Circuit Court, First Circuit. Filed Apr. 20, 1919, at 4:20 o'clock P. M. Henry Smith, Clerk. No. 1187. Rec'd and filed in the Supreme Court June 5, 1919, at 11:35 A. M. J. A. Thompson, Clerk.

No. 1291. Rec'd and filed in the Supreme Court, Sept. 27, 1920, at 3:10 P. M. J. A. Thompson, Clerk. [254]

[Stamped:] Circuit Court, First Jud. Circuit.
Jun. 2, 1917.

433.

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

LAW 8142.

R. 5/106.

LEWERS & COOKE, LTD.,

vs.

WONG WONG et al.

INDEX TO WITNESSES.

Fred Harrison.....	4	6	
George C. Kopa.....	12		
B. N. Kahalepuna.....	18		
Wong Wong.....	20	29	53
W. R. Coombs.....	60	83	
Thomas Gill	106	108	
W. R. Coombs (rec.).....		110	120
F. J. Lowrey.....	122	125	126

[255]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

LAW 8142.

LEWERS & COOKE, LIMITED,

vs.

WONG WONG.

Transcript of Testimony.

February 1, 1917.

The COURT.—Two cases are on this morning, Law 8142, Lewers & Cooke vs. Wong Wong—

Mr. PETERS.—We are ready, if the Court please.

The COURT.—And Law 8145, Wong Wong against the Honolulu Skating Rink. Now, let's have the appearance in the first case; Lewers & Cooke represented by Castle & Withington?

Mr. CASTLE.—That's right.

The COURT.—And Wong Wong by whom?

Mr. PETERS.—Castle & Withington, as I understand it.

Mr. CASTLE.—No, Wong Wong in the first case is not represented. There is no answer on file.

The COURT.—Is there a default?

Mr. CASTLE.—Yes. I have asked the clerk to ascertain if there are any papers on file in that case by Wong Wong or by the Honolulu Skating Rink.

The COURT.—I don't see any motion for a default here.

Mr. CASTLE.—I would ask for a default.

Mr. WITHINGTON.—Wong Wong is here; he can—your Honor ask him—

Mr. CASTLE.—Against the Honolulu Skating Rink, Wong Wong himself is here.

The COURT.—Wong Wong, come forward. Do you— You understand [256] English?

Mr. WONG WONG.—Not too much.

Mr. CASTLE.—I think probably better have an interpreter.

(The official interpreter is called.)

The COURT.—Say Kan Lau, ask Mr. Wong Wong if he wishes to make any defense in case Number 8142, Lewers & Cooke against himself and some others, against Wong Wong, Morris Rosenbledt, Fred Harrison and the Honolulu Skating Rink, Limited?

Mr. WONG WONG.—Yes, I wish to have a defense.

The COURT.—Have you answered?

Mr. WONG WONG.—Mr. Castle is handling the case.

Mr. WITHINGTON.—He means in the other case.

The COURT.—Mr. Castle—Castle & Withington cannot possibly handle his case here because they are on the other side; they are on the Lewers & Cooke side. This is the case where Lewers & Cooke sue you. In that case are you defending? Do you wish to defend?

Mr. WONG WONG.—Well, in that case I do not wish to enter a defense, your Honor.

The COURT.—Very well, then, you confess all the allegations of the complaint, do you?

Mr. WONG WONG.—Yes, I do.

The COURT.—Let that appear. Now, in the case of Wong Wong against—let's see who they are; Honolulu Skating Rink, a corporation, Morris Rosenbledt and Fred Harrison. In that suit you are represented by Castle & Withington, are you?

Mr. WONG WONG.—Yes.

The COURT.—Very well. Now, I was not quite through the first, the Lewers & Cooke case. Wong Wong confesses judgment, practically; Morris Rosenbledt and Fred Harrison are both [257] represented by you, Mr. Peters?

Mr. PETERS.—Yes, your Honor.

The COURT.—Honolulu Skating Rink, Limited, is that represented?

Mr. CASTLE.—No, I am going to ask for a default against them in that case.

The COURT.—Mr. Cullen, call Honolulu Skating Rink, Limited.

(Honolulu Skating Rink called three times and no response.)

The COURT.—The default of the defendant, Honolulu Skating Rink, Limited, will be entered upon motion of the plaintiff, now made orally in open court, and there being no plea or appearance on behalf of said defendant. Can these cases be tried together, gentlemen?

Mr. PETERS.—Yes, your Honor.

The COURT.—Very well, then, we are here for the present to try the Lewers & Cooke case, are we?

Mr. PETERS.—Yes, your Honor.

The COURT.—We needn't bother with the other for the present. Proceed.

(Pleadings read and opening statements made to the Court.)

Mr. CASTLE.—I suppose that defendant is—will admit that Lewers & Cooke and Honolulu

Skating Rink, Limited, are, and were at the times named in the complaint, corporations duly organized under the laws of the Territory of Hawaii, doing business in said Honolulu.

Mr. PETERS.—We will admit that somebody will so testify.

Mr. CASTLE.—All right. And that the defendants, Morris Rosenbledt and Fred Harrison, are residents of the city of Honolulu?

Mr. PETERS.—I don't think it is necessary. May I ask counsel a question as to whether that is necessary for this action, that the defendant be a resident of the city and county of Honolulu? I was just asking Mr. Withington. [258]

Mr. CASTLE.—I don't think it is necessary.

Testimony of Fred Harrison, for Defendants.

FRED HARRISON, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. Mr. Harrison, you are one of the defendants in this case? A. Yes, sir.

Q. And are you and Mr. Rosenbledt the owners of the land described in the complaint?

Mr. PETERS.—I object to the question as calling for a conclusion of the witness, your Honor.

The COURT.—I will allow the question.

Mr. PETERS.—Exception.

A. We are, yes, sir.

Q. And did you, together with Mr. Rosenbledt,

(Testimony of Fred Harrison.)

execute a lease to the Honolulu Skating Rink, Limited, one of the defendants in this case?

A. We did; yes, sir.

Q. Have you that lease with you?

A. I have—no, I have not.

Q. Well, where is this land situated, Mr. Harrison?

A. Situated on the Ewa side of Fort Street, above Beretania Street, adjoining the Sachs—original Sachs building.

Q. That is, the Sachs building is on the—

A. On the corner.

Q. —makai side?

A. Yes, on the makai corner; it adjoins that property.

Q. Mr. Harrison, the building for which the materials in this case are claimed, was that built on this land?

Mr. PETERS.—I object to the question as incompetent, irrelevant [259] and immaterial, assuming a fact not in evidence, that there is any claim for any materials put in any building.

The COURT.—I allow the question.

Mr. PETERS.—Exception.

A. I couldn't say. I don't know. I took no records of any materials that went on the place. The plaintiffs, probably, would know. I don't know whether those materials that are claimed went in that building or some other building.

Mr. CASTLE.—Q. I am asking if the building was erected on that land?

(Testimony of Fred Harrison.)

A. There was a building erected on that land; yes.

Q. That was subsequent to the execution of this lease? A. Yes, sir.

Q. By the Honolulu Skating Rink?

Mr. PETERS.—Object to the question as leading, suggestive, incompetent, irrelevant and immaterial.

The COURT.—Allow the question.

Mr. CASTLE.—Q. Was that by the Honolulu Skating Rink?

Mr. PETERS.—We take an exception.

Mr. CASTLE.—That question was answered, was it?

Mr. PETERS.—I object to the question as leading and suggestive.

The COURT.—I allow that.

A. What was that question?

Mr. CASTLE.—Q. The building— You testified that the building was built on that land. Now, by the Honolulu Skating Rink?

A. I couldn't say that it was. I know that the contract was—that the lease was made to the Honolulu Skating Rink. What follows, that they agreed with others, I couldn't say anything about that. I only know there was a building on that property.

Q. Do you know who the contractor was? [260]

A. I have heard since, yes. I didn't know at the time.

Q. Would you state? A. I would—

Mr. PETERS.—I object to the question as

(Testimony of Fred Harrison.)

assuming a fact not in evidence, that there was any contract.

The COURT.—I think the objection is well taken, on another ground, however, largely that it is hearsay.

Mr. CASTLE.—No further questions.

Cross-examination.

(By Mr. PETERS.)

Q. Mr. Harrison, you say that you made a lease to the Honolulu Skating Rink? A. Yes, sir.

Q. You say you have not got that lease with you? A. No, sir.

Q. Do you remember, Mr. Harrison, when that lease was executed?

A. I couldn't say exactly the date. I know it was after Mr. Rosenbledt got back here from the Coast.

Q. After Mr. Rosenbledt got back here from the Coast. Do you remember when Mr. Rosenbledt came back from the Coast?

A. I think it was some—I couldn't remember the date; I think it was somewhere around November, I think.

Mr. WITHINGTON.—I would like to suggest that the best evidence is the lease. He is one of the lessors, easy for them, they can recall Mr. Harrison.

Mr. PETERS.—I would suggest, if the Court please, that the best evidence is not the instrument itself.

(Argument.)

(Testimony of Fred Harrison.)

The COURT.—You have made an objection to the question, have you?

Mr. WITHINGTON.—I was making—about to make an objection to the question, on the ground that the lease was the best evidence, and this being the lessor, that he should be required to produce [261] the lease and show the date.

(Argument.)

Mr. PETERS.—I call to your attention, Mr. Harrison, a stipulation filed in this case, to the extent that it “is stipulated and agreed that a copy of a lease hereto attached . . . good cause of action against the defendants, Morris Rosenbledt and Fred Harrison,” and calling your attention to this copy, and especially to the acknowledgment of Hilda Smith as a notary public, I would ask you when that instrument was executed.

Mr. WITHINGTON.—Object to the—

Mr. PETERS.—By you and Mr. Rosenbledt?

Mr. WITHINGTON.—I object to the question on the same ground. We have no objection to the stipulation being put in evidence for any purpose that—

The COURT.—Well, the ground is that it is not the best evidence?

Mr. WITHINGTON.—No, not the best evidence, and we have no objection to the copy being put in as evidence of the fact—of any facts that Mr. Peters wishes to prove; no objection to the stipulation being put into evidence now, as if the copy was the original.

(Argument.)

(Testimony of Fred Harrison.)

Mr. PETERS.—When did you sign that lease?
When did you sign that lease, Mr. Harrison?

Mr. CASTLE.—We raise an objection to that,
that that is—

Mr. PETERS.—Or give that?

Mr. CASTLE.— —immaterial; on the ground
that this lease has gone to the Supreme Court;
the Supreme Court has decided that this complaint
in connection with this lease stated a cause of
action against the defendant, and it does not make
any difference whether the lease was signed on the
16th of October or the 21st [262] of September.

The COURT.—I allow the question.

Mr. CASTLE.—Take an exception.

Mr. PETERS.—When did you sign that or make
that lease, Mr. Harrison?

A. I couldn't recall the exact date. According
to this document here it was signed on the—on
October the 16th.

The COURT.—What year? A. 1914.

Mr. PETERS.—Where was it signed, Mr. Harrison?
A. It was signed by—

Mr. CASTLE.—How is that material, where it
was signed?

The COURT.—You object to it on the ground of
immateriality?

Mr. CASTLE.—Yes.

The COURT.—I think, inasmuch as you have
asked whether he made a lease, that they are at
liberty to go into this on cross-examination.

A. It was signed at your office.

(Testimony of Fred Harrison.)

Mr. PETERS.—Whereabouts at that time was my office, Mr. Harrison?

Mr. CASTLE.—I renew the objection, immaterial.

The COURT.—I cannot see the materiality.

Mr. PETERS.—I want to fix it absolutely, your Honor, as to place and the time.

The COURT.—Go ahead.

Mr. PETERS.—So that, if we get to your defense, the circumstances will indicate to your Honor as to the truth of the assertions, if there is any question of conflict.

The COURT.—Go ahead.

Mr. PETERS.—Where was my office at that time? A. In the McCandless Building.

Mr. CASTLE.—My objection and exception will go to this whole [263] line?

The COURT.—Yes, one objection will do.

Mr. PETERS.—Q. Mr. Harrison, who else was present besides yourself when you signed that lease?

A. There was yourself, I think, and Mr. Rosenbledt, and myself, I think, and—

Q. Yes? A. And that's all.

Q. Do you know where Mr. Rosenbledt was on the 21st of September of that year, 1914?

Mr. CASTLE.—That may be a different line. I will object to that, to the materiality of that.

The COURT.—I allow the question.

Mr. CASTLE.—Exception.

A. He was not in the Territory, I know that.

(Testimony of Fred Harrison.)

I don't know just exactly where he was; I think he was in San Francisco.

Mr. PETERS.—And as far as you know, on the 21st of September, 1914, Mr. Rosenbledt was not within the Territory? A. No, sir.

Q. Mr. Harrison, at the time you signed that lease, do you recall whether or not you acknowledged it?

Mr. CASTLE.—We object—

Mr. PETERS.—For the purpose of fixing time, whether it was the same day or another day.

The COURT.—Allow the question.

A. I think it was acknowledged the day after.

Mr. PETERS.—Q. You think it was acknowledged the day after? A. Yes.

Q. And do you remember before whom it was acknowledged?

A. Miss Dwight, I think it was.

Q. Miss Smith, was it?

A. I couldn't tell you; I cannot remember exactly; I think it was Miss Dwight. [264]

Q. Did you acknowledge it before Miss Dwight?

A. I couldn't really swear to that.

Q. Well, I want to call your attention to this—

A. Wait a minute— I know I met Miss Smith—

Mr. WITHINGTON.—The witness hasn't shown any familiarity with this paper. He never saw it until you showed it to him just now. I object to it on the ground that the witness isn't familiar with this paper except as Mr. Peters showed it to him a moment or two ago.

(Testimony of Fred Harrison.)

Mr. PETERS.—Q. I will ask you the question again if you recollect before whom you acknowledged the execution of that lease to the Honolulu Skating Rink, Mr. Harrison?

A. I could not say. I could not remember.

(Argument.)

Mr. PETERS.—Now, we want to know what that interest is. We want to show, if the Court please, that Mr. Harrison doesn't know anything about it, his interest, the character of his interest or anything of the kind.

The COURT.—Go ahead and show it.

Mr. CASTLE.—Well, we object, your Honor, as immaterial.

The COURT.—Under that statement of counsel I allow the question.

Mr. CASTLE.—Take an exception.

Mr. PETERS.—Answer the question, please.

A. Whether I have gone through the title?

Q. Whether you ever made a search of the title of that property to which you have referred on direct? A. Yes, I have.

Q. You have made a search of it?

A. Yes, I have an abstract.

Mr. CASTLE.—My objection goes to this line, your Honor.

The COURT.—Your objection goes to all this line. That will be so considered. [265]

Mr. PETERS.—You made a search of the title, as I understand, Mr. Harrison? A. Yes, sir.

Q. And have you ever had any experience or

(Testimony of Fred Harrison.)

training in the matter of determining land titles?

A. No, only what is brought before me and recommended to me as being a clear title. I had an abstract made of that property.

Q. But you yourself know nothing about the business of abstracting or the searching of titles, or are you learned in the law of titles to give an opinion as to whether or not a person is an owner or otherwise of real property?

Mr. WITHINGTON.—We will concede that Mr. Harrison is, from his long experience. This is a concession so as to save you trouble. (To Mr. Peters.)

Mr. PETERS.—Your back-handed concessions are like the concession relative to this lease.

(Argument.)

The COURT.—Proceed. I will allow that question.

A. Yes, I have searched titles myself, and I have had them made up by different parties.

Mr. PETERS.—Q. And you claim, do you, Mr. Harrison, that you have had learning in that regard, to determine interest in real property from observation and study of an abstract?

A. I think so.

Q. And from that learning and ability you claim that you have determined that you are an owner of this property? A. I do.

Q. One of the owners. That's all, your Honor.

Mr. WITHINGTON.—I suppose it is under-

(Testimony of Fred Harrison.)

stood that this stipulation is in evidence, of the lease? [266]

Mr. PETERS.—No understanding on my part.

Mr. WITHINGTON.—Then, while Mr. Harrison is on the stand, we will offer this stipulation in connection with his testimony, which otherwise is not complete.

Mr. PETERS.—To which we respectfully object on the ground it is incompetent, irrevelant and immaterial, not the best evidence, and not proper re-cross—or redirect.

The COURT.—Let me see the stipulation. This is a part of the case, I have no doubt. I think that this obviates the proof of the lease. It is for all the purposes of this case, as it seems to me, stipulated that it is a full, true and correct copy of the lease referred to in plaintiff's bill of complaint.

Mr. PETERS.—Well, we respectfully except, if the Court please.

Mr. WITHINGTON.—That's all.

Testimony of George C. Kopa, for Plaintiff.

GEORGE C. KOPA, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. Mr. Kopa, what is your business?

A. Deputy registrar of conveyances of the Territory of Hawaii.

Q. Have you with you book 388? A. Yes, sir.

(Testimony of George C. Kopa.)

Q. Of the registry of conveyances? A. Yes, sir.

Q. Will you turn to page 234 of that book? To save any question of exception at all we offer in evidence the deed described in the complaint to Morris Rosenbledt and Fred Harrison of this piece of land.

The COURT.—From whom?

Mr. CASTLE.—From George Tourny and wife to Morris Rosenbledt et al. [267]

I will ask that it be read into the record.

Mr. PETERS.—To which we respectfully object on the ground that the same is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in the case.

The COURT.—I allow it.

Mr. PETERS.—Exception.

Mr. CASTLE.—Will you read the deed?

A. (Reading:) “This Indenture, made this 23d day of January, A. D. 1913, between George Tourny and Marie E. Tourny, his wife, both of the City and County of San Francisco, State of California, hereinafter called the grantors, parties of the first part, and Morris Rosenbledt and Frederick Harrison, both of Honolulu, Territory of Hawaii, hereinafter called grantees, parties of the second part,

Witnesseth, That, in consideration of the sum of twenty-five thousand (\$25,000.00) dollars paid to the said grantors by the said grantees, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said grantees, their heirs and assigns forever, all those certain pieces

or parcels of land situated in Honolulu, Island of Oahu, Territory of Hawaii, and bounded and described more particularly as follows, to wit:

‘First, all that certain lot and parcel of land situate on the north side of Fort Street, above Beretania street, in Honolulu, Island of Oahu, Territory of Hawaii, being a portion of the land described in Land Commission Award Number 734, Royal Patent number 1741, Apana 1, to Iona Piikoi, described as follows:

‘Beginning at a point on the north side of the new line of Fort street, 111 feet northeasterly from the new line of [268] Beretania street, thence the boundary runs by true bearings, Meridian of M. D. Monsarrat’s survey of January 20th, 1888,

1. N. 33 degrees, 13 minutes, W. 118.8 feet along L. C. A. 1043; Kamakahonu;

2. N. 54° 25’ E. 130.2 feet along remainder of Piikoi’s land; thence;

3. S. 74° 22’ E. 4.4 feet along stone wall; thence:

4. S. 32° 18’ E. 69 feet along Lot Number 4 sold to A. S. Cleghorn, thence:

5. S. 61° 00’ W. 10.2; thence;

6. S. 32° 18’ E. 61.8 feet along a lane to new line of Fort Street; thence

7. S. 61° 14’ W. 120 feet along new line of Fort Street to point of beginning;

Containing an area of 38/100ths of an acre, more or less; and being the same premises conveyed to said George Tourny by deed of M. T. Simonton, a commissioner, bearing date November 13th A. D. 1905,

and recorded in the registrar's office, Oahu, in Liber 277, pages 94-96.

Second: All that certain piece or parcel of land situate on Kukui Place between Fort street and Nuuanu street, Honolulu, Island of Oahu, Territory of Hawaii, and bounded and more particularly described as follows, to wit: Beginning at an iron pin on the southwest side of Kukui Place and running by true azimuths

1. $45^{\circ} 04' 52.4$ feet along remainder of L. C. A. 734 to an iron pin;

2. $325^{\circ} 23' 100$ feet along L. C. A. 991 to Honanau, to a point $145^{\circ} 23' 118'$ feet from the south corner of where the brick building known as the Orpheum Building formerly stood; [269]

3. $235^{\circ} 5' 177$ feet along the Orpheum lot to the middle of a stone wall;

4. $106^{\circ} 50' 61$ feet along the middle of the stone wall;

5. $109^{\circ} 20' 66$ feet along same and the southerly side of Kukui Place;

6. $114^{\circ} 20' 8.9$ feet along Kukui Place to the initial point. Containing an area of 9,685 square feet, the same being a portion of L. C. A. 734, R. P. 1741 to Iona Piikoi, and being the same premises conveyed to the said George Tourny by deed from the Kapiolani Estate, Limited, an Hawaiian corporation, bearing date December 24th, A. D. 1906, and recorded in the registrar's office, Oahu, in libre 286, pages 369-370, together with all and singular the tenements, hereditaments and appurtenances

(Testimony of George C. Kopa.)

thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with all the privileges and appurtenances thereunto belonging unto the said grantees, their heirs and assigns forever.

And the said grantors hereby, for themselves and their heirs, and assigns, covenant with the said grantees and their heirs and assigns, that they are lawfully seized in fee simple of the granted premises; that they are free from all incumbrances; that they have good title to sell and convey the same as aforesaid, and that they will, and their heirs and assigns shall warrant and defend the same unto the said grantees, their heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof the said parties of the first part [270] have hereunto set their hands and seals the day and year first above written."

Mr. PETERS.—Q. What is that day and year first above written, Mr. Kopa?

A. 23d day of January, 1913. "Geo. Tourny, Marie E. Tourny"— Shall I read the acknowledgment, Judge?

The COURT.—I don't know whether they wish to read the acknowledgment.

Mr. CASTLE.—Unless the other side— Better read it all in.

The COURT.—Proceed.

(Testimony of George C. Kopa.)

A. Before Charles F. Duisenberg, notary public of the City and County of San Francisco, State of California, on the 23d day of January, A. D. 1913. Also the certificate of the county clerk authenticating the commission of the notary public, dated January 23, 1913, H. I. Mulcrevy, Clerk. Seal. Recorded on the 21st day of February, A. D., 1913, at 2:10 P. M. Signed, Registrar of Conveyances.

Mr. CASTLE.—Mr. Kopa, have you with you book 403? A. Yes, I have.

Q. Will you turn to page 376.

A. Three hundred and seventy-six.

Mr. CASTLE.—May it please the Court, we are offering, to save any possible objection, these— Well, I might ask him first to state—

Q. What do you find on that page?

A. I find a lease made by Morris Rosenbledt and Fred Harrison to Honolulu Skating Rink, Limited.

Mr. CASTLE.—In order to save any possible objection, we are offering this record of this lease in evidence, although I suggest that it might be stipulated that this is the same in wording as [271] the lease which is attached to the stipulation. That would save reading it in evidence. If Mr. Peters could have his exception, if he wants to take one, that then will—

The COURT.—Anything to say, Mr. Peters?

Mr. PETERS.—Why, I want to facilitate matters, if the Court please; I assume that when I signed that stipulation, if the Court please, I

(Testimony of George C. Kopa.)

signed it having checked it up. I don't remember now whether I really did, but I think the easiest way to do, if the Court please, would be to stipulate that this is a copy subject to anything I may call to the attention of the Court afterwards.

Mr. CASTLE.—Yes.

Mr. PETERS.—Of course without it being taken as waiving, if the Court please, our general objection to the lease as incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in the case.

Mr. CASTLE.—I understand that.

The COURT.—Very well, then, I understand it to be stipulated or agreed that the purported copy of the lease attached to the stipulation herein, filed on April 5th, 1915, may be considered and regarded as a true copy of lease as recorded in Liber 403, at—beginning at page 376—

The WITNESS.—Page 381—376 to 381.

The COURT.—Beginning at page 376?

A. 376.

The COURT.—Subject, however, to any inaccuracy that may be called to the attention of the Court.

Mr. PETERS.—And with this further suggestion, if I may be permitted, that the endorsements of the registrar as to the time of recordation also be read, and then we will have a complete copy. [272]

Mr. CASTLE.—Yes. Isn't that on that? Will

(Testimony of George C. Kopa.)

you read that, Mr. Kopa, and that will be our offer of evidence in that form.

The COURT.—Yes, very well, then. Now then, read the—

A. Just the recordation?

The COURT.—Yes.

A. (Reading:) “Entered of record the 17th day of October, A. D. 1914, at 11:01 o’clock A. M. and compared. Charles H. Merriam, Registrar of Conveyances.”

The COURT.—That’s all, Mr. Kopa. Any questions, Mr. Peters?

Mr. PETERS.—No, your Honor.

Testimony of B. N. Kahalepuna, for Plaintiff.

B. N. KAHALEPUNA, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. What is your business?

A. My name is B. N. Kahalepuna, Clerk of the Circuit Court, First Circuit, Territory of Hawaii.

Q. And have you the records of the liens filed in this circuit? A. Yes, I have.

Q. Have you examined—would you produce a lien, if any was filed, in the case of Lewers & Cooke versus Wong Wong, Morris Rosenbledt, Fred Harrison and Honolulu Skating Rink, Limited?

A. Yes, I have it here.

Q. Have you it there? A. I have it with me.

(Testimony of B. N. Kahalepuna.)

Q. Will you kindly produce the same?

We offer the same in evidence.

Mr. PETERS.—We object to it as incompetent, irrelevant and [273] immaterial, not properly authenticated, no foundation laid for its admission, and on the further ground, if the Court please, that no proper lien has ever been filed in this case, in as much as that the—there is no showing of the reasonable value of the labor and/or material furnished for a proper understanding of the lien; that the premises are not sufficiently described to permit a lien or a proper understanding of a lien. I submit that without argument, your Honor.

Mr. CASTLE.—In my offer I will just add—I had not quite finished—I offer the lien as produced—notice of lien as produced, together with all the endorsements and the proof of service thereon.

The COURT.—Yes, very well.

Mr. PETERS.—To which we enter the objection, if the Court please, that it is incompetent, irrelevant and immaterial, not properly authenticated, no proper foundation laid for its admission, and on the further ground that no lien as provided by the statute has ever been filed in this case, and that the purported lien or notice of lien does not either give a description of the labor and/or material furnished and the premises upon which a lien is claimed with specific definiteness as required by the statute for a fair understanding or a proper understanding of the meaning of the notice of lien.

(Recess.)

(Testimony of B. N. Kahalepuna.)

Mr. PETERS.—I want to supplement my objection, if the Court please, to this lien, with the further objection that the same does not set forth the amount of the claim of material furnished nor a description of the property sufficient to identify same, nor are the matters and things therein contained sufficient to a clear understanding of the same. [274]

The COURT.—Now, I will hear you in any argument you wish to make.

(Argument.)

The COURT.—I have observed no defect in the lien and none has been pointed out such as I think at all establishes the deficiency of it. I therefore admit it.

Mr. PETERS.—To which we respectfully except, your Honor.

(Marked Exhibit "A.")

Testimony of Wong Wong, for Plaintiff.

WONG WONG, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. What is your business? A. Contractor.

Q. How long have you been in that business?

A. Eighteen years.

Q. Where? A. In this city.

Q. What is the approximate amount of your business each year?

(Testimony of Wong Wong.)

Mr. PETERS.—Oh, I object to this as absolutely immaterial.

Mr. CASTLE.—I desire, your Honor, to show his large business and experience where the prices of materials are concerned.

The COURT.—Very well, I will allow it.

A. It ranges from fifty to one hundred thousand dollars a year.

Mr. CASTLE.—Q. What sort of contractor?

A. Building, cement work.

Q. Well, what other work?

A. Plumbing and painting included.

Q. Well, now, you have mentioned one kind of building, cement building. Any others?

A. All kinds. Two-story buildings— [275]

Q. Well, but made of what—made of brick, stone, cement?

A. Brick buildings, also.

Q. How about wooden buildings? A. Yes.

Q. In your work as a contractor could you state your familiarity with prices of materials in Honolulu?

A. I know them well.

Q. Now, what kind of material?

A. Well, prices vary.

Q. No, I mean what kind of material?

A. Lumber prices.

Q. Well, any other?

A. All the building materials.

Q. Were you the contractor for the building built for the Honolulu Skating Rink?

Mr. PETERS.—I object to the question as calling for a conclusion of the witness, incompetent, irrele-

(Testimony of Wong Wong.)

vant and immaterial. If there was any contract, verbal or written, we are entitled to know what it was.

The COURT.—I will allow you to answer.

Mr. PETERS.—Exception.

A. Yes, I was the contractor.

Mr. CASTLE.—And where was this building to be erected?

Mr. PETERS.—I object to the question as incompetent, irrelevant and immaterial, if the Court please. We are entitled to know whether this was a verbal or written contract.

(Argument.)

Mr. CASTLE.—Withdraw the question for the present.

Q. Mr. Wong Wong, was this contract oral or in writing?

Mr. PETERS.—I object, if the Court please. There is no showing there was any contract.

Mr. CASTLE.—Yes, he has stated there was.
[276]

Mr. PETERS.—He says he was a contractor.

A. It was a written contract.

Mr. CASTLE.—Q. Have you that contract?

A. There are three. Lewers & Cooke kept one, the owner one, and the architect one.

Q. Well, have you a copy; have you a contract yourself? A. I have not that contract now.

Q. Did you proceed with the work under the contract?

Mr. PETERS.—I object to the question as assum-

(Testimony of Wong Wong.)

ing a fact not in evidence, to wit, that there was a contract.

The COURT.—I allow the question.

Mr. PETERS.—Exception.

A. I did.

Mr. CASTLE.—Q. And where was it that this building was to be built?

Mr. PETERS.—I object to that as incompetent, irrelevant and immaterial. The contract is the best evidence of what his obligations were.

Mr. CASTLE.—I withdraw that question.

Q. Where did you build that building?

Mr. PETERS.—I object to the question as incompetent, irrelevant and immaterial. We are entitled to have this contract before we proceed any further, it seems to me.

(Argument.)

The COURT.—Well, I think technically the objection is well taken, for this reason, that, if he built the building in some other locality than that called for in the contract, why this lien would not cover it, but, if counsel will undertake to make the connection later on by producing the contract—

Mr. CASTLE.—We expect to do so, your Honor. This witness has not the contract and I cannot put it in through him. [277]

(Argument.)

The COURT.—If the piece of paper is not immediately available, but, nevertheless, it may be produced later on, I can see no objection, upon the undertaking of counsel to produce it, to proceeding

(Testimony of Wong Wong.)

with the evidence as to where the building was put up and what it was like, *et cetera*, then, upon the production of the contract, if it is found that the building on this location, *et cetera*, were not according to the contract, why, I assume the lien will probably not hold.

(Argument.)

Mr. WITHINGTON.—We can show you a copy that we can prove to be an exact copy of this contract, if you desire us to do that way, but we have two subpoenas out for the two originals, and they are—unfortunately the sheriff hasn't been able to find either of the men.

Mr. CASTLE.—Well then, will you answer the last question?

The COURT.—We are assuming that this document that you hand counsel is a correct copy.

(Question read by reporter.)

A. On Fort Street.

Mr. CASTLE.—Q. Whereabouts on Fort Street?

A. Where the Orpheum Theater used to be, which is a little below Beretania Street.

The COURT.—Q. A little below?

A. Beretania—where the Orpheum Theater used to be.

The COURT.—Q. Well, that is not below Beretania Street, is it?

Mr. CASTLE.—What did he mean when he pointed that way?

The INTERPRETER.—Well, a little further down.

(Testimony of Wong Wong.)

Q. Does he mean makai or mauka of Beretania Street? A. Mauka. [278]

Q. Mauka, and where with reference to the Sachs building? A. Just next to the Sachs Building.

Q. On which side, mauka or makai?

A. Mauka.

Q. Will you describe this building, please.

Mr. PETERS.—Well, I object to this, if the Court please, incompetent, irrelevant and immaterial. This is an action by a materialman here for furnishing material. We are most concerned by a description of the building. All we want to know is whether or not, under the Statutes, if the Court please, this material was furnished to be used in the construction of a building, that's all.

The COURT.—And was so used.

Mr. PETERS.—And was so used.

(Argument.)

The COURT.—I will ask a question: What was the character of that building? Was it made of cement, wood, iron or what—or tin?

A. It was made of wood and the floor was made of cement.

The COURT.—Proceed.

Mr. CASTLE.—Q. Have you examined bill of complaint with the exhibit attached thereto, and the notice of materialman's lien in this case?

Mr. PETERS.—I object to the question as incompetent, irrelevant and immaterial.

The COURT.—I don't think it is subject to that objection. I will allow it.

(Testimony of Wong Wong.)

Mr. PETERS.—Exception.

A. I did.

Mr. CASTLE.—Q. From whom did you order material for this building? [279]

A. From Lewers & Cooke.

Q. I now show you the complaint and refer you to Exhibit “A” and ask you if this correctly states the materials which went into this building?

Mr. PETERS.—I object to the question as incompetent, irrelevant and immaterial, leading and suggestive, and an improper way, if the Court please, of examining.

Mr. CASTLE.—I will just reframe that question. Instead of “which went into the building,” which you ordered from Lewers & Cooke for this building”?

Mr. PETERS.—Well, we object to it, if the Court please, as incompetent, irrelevant and immaterial, improper method of examination of this witness; that the exhibit, if the Court please, is nothing that the witness has made himself or a memorandum made by him contemporaneously with the transaction. It is improperly in his hands, if the Court please, for the purposes of this case, and further that the question is leading and suggestive.

The COURT.—I think that is the principal point, namely, leading and suggestive. Might be an easier way. Let me ask the question and see how you like it:

Q. You say you have examined the bill or account,

(Testimony of Wong Wong.)

bill of particulars attached to the complaint in this case?

A. Yes. Yes, I have compared with my receipts, too.

Q. Can you state whether or not the items and materials mentioned in that bill of particulars or account were delivered to you by Lewers & Cooke?

A. Yes.

Q. Now, here is a further question: You say that those materials were sold and delivered to you by Lewers & Cooke; what did you do with the material?
[280]

Mr. PETERS.—I object to that. He didn't so state. You asked him whether or not he could say that they were delivered and he said yes.

The COURT.—Very well.

Q. You have stated that you know whether they were delivered to you or not. Now state whether they were or not? A. They were.

Q. What did you do with them?

A. For constructing that building.

Q. Well, you say for constructing that building; that does not answer my question. What did you do with the material?

Mr. PETERS.—Well, I object to this, if the Court please, the Court taking the matter of the examination of the witness out of the hands of counsel. We have two learned counsel here, both of them are trying the case, your Honor.

The COURT.—I withdraw my question. Proceed.

(Testimony of Wong Wong.)

Mr. CASTLE.—What did you do with those materials?

A. If you want to know how I used every item of this bill I will tell you.

Q. No, I am asking now what you did with those materials—all of them?

A. Used for all—I used all this material to build the building.

Q. Which building? A. The Skating Rink.

Q. That is the building on Fort Street adjoining the Sachs property that you have testified to?

A. Yes.

Q. Now, what do you say as to the prices marked on that bill of particulars, whether or not they represent the market value of those materials in Honolulu at the present time? [281]

Mr. PETERS.—I object to it if the Court please; leading and suggestive; no foundation laid for this evidence, incompetent and immaterial.

The COURT.—I think that the question is all right.

Mr. PETERS.—Exception.

A. Reasonable price, and it was the market price at that time.

Mr. CASTLE.—Who was the architect on this job?

Mr. PETERS.—I object, if the Court please, assuming a fact not in evidence, to wit, that there was any architect.

Mr. CASTLE.—Withdraw that question.

Q. Was there an architect on this job?

(Testimony of Wong Wong.)

Mr. PETERS.—Object to the question as immaterial whether there was an architect on the job.

The COURT.—Allow the question.

Mr. PETERS.—Exception.

A There was an architect.

Q. Who was it?

Mr. PETERS.—I object to the question as immaterial.

The COURT.—Allow it.

A. Gill.

Mr. CASTLE.—Q. I show you a paper and ask you if you can state when, in reference to this paper, the building was completed?

Mr. PETERS.—I object to it as incompetent, irrelevant and immaterial.

Mr. CASTLE.—I withdraw that question, Mr. Peters, and get at it the other way. I will show you a paper and ask you if you know what that is. (Showing.)

A. It was an order for two thousand dollars.

Q. From whom did you receive that?

A. From Gill. [282] ..

Mr. CASTLE.—I will offer the paper in evidence.

Mr. PETERS.—We object to it, if the Court please, as incompetent, irrelevant and immaterial, no foundation laid for its admission.

(Argument.)

The COURT.—Well, can't the witness testify independently of that paper, when the building was completed?

(Testimony of Wong Wong.)

Mr. CASTLE.—Yes, I think so. I will withdraw this last question.

Q. Can you state when the building was completed?

The COURT.—Can you state this independently of reference to any memorandum?

A. On the 2d of November.

Q. Of what year? A. 1914.

Mr. CASTLE.—Q. George— Referring you to this paper, do you know who George Ikeda is?

A. He is a Japanese.

Q. Well, did he have any connection with the Honolulu Skating Rink?

A. Well, he said it was his.

Q. What's that?

A. He said that it belonged to him.

Q. What's that?

A. The skating rink belonged to him.

Q. Do you know whether or not he was an officer of the skating rink?

A. I don't know what office he held. He always talked to Gill about the building.

Mr. CASTLE.—Well, we offer this in evidence.

Mr. PETERS.—We object to it as incompetent, irrelevant and immaterial, no foundation laid for its admission, no authentication of the document.

[283]

(Argument. Offer withdrawn.)

Cross-examination.

(By Mr. PETERS.)

Q. Mr. Wong Wong, what was the price of 1 by

(Testimony of Wong Wong.)

12's in October of 1914, 22-foot lengths?

Mr. WITHINGTON.—We object to the question as indefinite.

The COURT.—Cedar of Lebanon or koa or Northwest, fir or redwood?

Mr. PETERS.—I don't know, your Honor, but I am using the same information that the witness gave. He said the prices of this material, if the Court please, were the prevailing market prices at that time, and I find figures, in the bill of particulars, 22-foot lengths of 1 by 12's; I am asking him what the price of it was at that time.

The COURT.—Referring to the bill of particulars? Very well, I think you have a right to go ahead.

Mr. WITHINGTON.—Where is that? Which item is that?

Mr. PETERS.—Under date of October 22d. 1 by 22—1/12, 1/14.

Mr. WITHINGTON.—I don't see anything of the kind. Mr. Harrison can straighten you out. I see something else which you have not read. He has left out something.

Mr. PETERS.—What is it?

Mr. WITHINGTON.—Ditto mark.

Mr. PETERS.—Oh, yes, ditto, ditto.

Mr. WITHINGTON.—“Ditto” has got to be in connection with what goes above.

Mr. PETERS.—We are not translating here, if the Court please. I want to know what the value in October, 1914, was of 1x12 P. R. W.?

(Testimony of Wong Wong.)

A. Thirty dollar base.

The COURT.—Oh, faced, faced. [284]

The INTERPRETER.—Thirty dollars up, I think that is what he means. Base.

Mr. PETERS.—Thirty dollars up. Here in October of 1914 what was the reasonable value of 46 feet of 1x22, P. R. W., 1x12 and 1x14?

A. It depends on what kind of wood it is,—clear or selected, it will be different.

Q. Surfaced, give us the price surfaced, or the reasonable value at that time, surfaced?

A. Surfaced; clear, you mean?

Q. P. R. W., that is what I am talking about?

A. Forty-four dollars fifty cents.

Q. What? A. \$44.50.

Q. \$44.50 for how much?

A. One thousand feet.

Q. What was the reasonable value of the same character of material at that time, 1x22?

A. Nor'west, 1x22, redwood, I think.

Q. P. R. W., yes?

A. Fifty-five dollars a thousand feet.

Q. Is that surfaced? A. Yes.

Q. What was the reasonable value at that time of P. R. W. 1x16? A. Redwood?

Mr. WITHINGTON.—What item is that?

Mr. PETERS.—Eighty feet—give the reasonable value of 80 feet of 1x16 P. R. W. 3/20. Do you get it, Mr. Withington?

Mr. WITHINGTON.—I get it now but I did not the other time.

(Testimony of Wong Wong.)

A. It depends on what kind of wood—Nor'west, clear or selected.

Mr. PETERS.—Well, P. R. W. surfaced red-wood?

A. Four dollars forty cents for eighty feet.
[285]

Q. How much is that a thousand?

A. Fifty-five dollars per thousand.

Q. What was 1x16, P. R. W. surfaced per thousand; what was the reasonable value in October, 1914?

Mr. WITHINGTON.—Wait a minute. There isn't anything—

Mr. PETERS.—1x16, P. R. W.

Mr. WITHINGTON.—There isn't anything of that kind charged here.

Mr. PETERS.—Make your objection to the Court. Answer the question, please.

Mr. WITHINGTON.—I object to it. There is no item that I find on here. There is the 3/18 in addition.

Mr. PETERS.—What does 3/18 mean?

Mr. WITHINGTON.—We know what it means.

Mr. PETERS.—Well, all right then, tell the Court what it means.

Mr. WITHINGTON.—We leave that to the witness or other experts. I am not on the witness-stand.

(Argument.)

Mr. PETERS.—Give me the reasonable value of 80 feet of 1x16, 3—P. R. W., 3/20, at that time?

(Testimony of Wong Wong.)

A. Four dollars forty cents, I said.

Q. All right; how much a thousand?

A. Fifty-five dollars.

Mr. CASTLE.—We object to that.

Mr. PETERS.—How much?

A. Fifty-five dollars.

Q. All right. Give me the reasonable value at that time of 72 feet of 1x16 P. R. W. 3/18?

A. The same price, \$55.00 per thousand.

Q. Give me the reasonable value at that time of 75 feet of 4x44 N. W., 4/14? [286] A. \$2.25.

Q. Eh? A. \$2.25 for 75 feet.

Q. What was the rate per thousand?

A. Thirty dollars per thousand.

Q. Give me the reasonable value at that time of 272 feet of 1x8 N. W. 17-24?

A. Thirty dollars a thousand.

Q. Give me the reasonable value at that time of 96 feet of 2x12 N. W. 2/24?

A. Thirty dollars a thousand.

Q. Thirty? A. Thirty dollars a thousand.

Q. Give the reasonable value of 434 feet of 1x12 N. W., 11/10, 6/14, 12/20, 802 apostrophe?

A. Thirty-one dollars per thousand, one by twelve.

Q. How much? A. Thirty-one.

Q. What was the reasonable value of—at that time of 548 feet of 1x12 N. W., 6/16, 14/18, 10/20?

A. According to their choice thirty dollars. If we were to pick them out, thirty-one dollars per thousand.

(Testimony of Wong Wong.)

Q. Did you pick them out?

A. I cannot tell now whether I picked them out or not.

Q. What was the reasonable value at that time of 257 feet of 1x14 N. W., 10/22?

A. Thirty-one dollars per thousand.

Q. What was the reasonable value at that time of 248 feet of 2x4, N. W., 4/26, 5/28, 4/32?

A. Thirty-one dollars.

Q. At that time what was the value of 96 feet of 2x8 N. W. 2/36?

A. Thirty dollars per thousand feet. [287]

Q. The same as to 80 feet of 1x4 N. W. 10/24?

A. Thirty-two dollars per thousand feet.

Q. And the same as to 50 feet 1x5 N. W. 5.24?

A. Thirty-two dollars per thousand feet.

Q. Reasonable value at that time of 118 feet of 2x3 N. W. 4/24, 5/28?

A. Thirty-one dollars per thousand, \$32 clean.

Q. Thirty-one or thirty-two? A. Thirty-two.

Q. Are these prices that you give all delivered at the job? A. Those were 1914 prices.

Q. Delivered on the job? A. Yes.

Q. Give the reasonable value at that time, delivered, of 300 feet of $1\frac{1}{4}$ x12, N. W. 10/24, 548 apostrophe? A. It depends on the length.

Q. I don't know the length. The item is 300 feet of $1\frac{1}{4}$ x12, N. W. 10/24, 548 feet.

Mr. WITHINGTON.—We will let the apostrophe go, but the $\frac{1}{4}$ is a little bit misleading. Say a quarter.

(Testimony of Wong Wong.)

A. Thirty-two dollars a thousand.

Mr. PETERS.—Q. How much, thirty-two?

A. Thirty-two.

Q. What was the value—what was the value at that time delivered of forty feet of 2x6 N. W. 2/20?

A. Thirty dollars per thousand feet.

Q. And the same price for 2/26? No, I will ask you about 87 feet of 2x10, 2/26, 127 apostrophe?

A. The same price.

Q. Thirty? A. Yes.

Q. One hundred and ten feet 1x12 N. W. 522?

[288] A. Thirty-one dollars a thousand.

Q. Thirty-one, Mr. Castle?

Mr. CASTLE.—Yes.

Mr. PETERS.—Which controls,—the item of 52 feet in the next one or the 162 apostrophe, which causes your learned brother such amusement?

Mr. WITHINGTON.—We have not seen any apostrophe.

The COURT.—You have not?

Mr. WITHINGTON.—No.

Mr. PETERS.—Q. I will ask you, Mr. Wong Wong, about this item as follows, 52 feet 4x4 N. W. 3/26, 162 apostrophe; what do you understand by that?

Mr. WITHINGTON.—I object to that on the ground that that is not what this says. It says "162 feet" here.

Mr. PETERS.—Does it? Whereabouts?

Mr. WITHINGTON.—Of course anybody that

(Testimony of Wong Wong.)

studies his arithmetic knows that that mark means feet.

The COURT.—Well, what is your question, gentlemen?

Mr. PETERS.—Well, I want to know from the witness what it means.

The COURT.—Oh, I don't think he should be expected to answer.

Mr. PETERS.—What does your Honor understand, what is the controlling figure?

The COURT.—Well, what it means, it seems to me, is very clear.

Mr. PETERS.—There is 52 feet of 2x4's—

The COURT.—Nor'west.

Mr. PETERS.—What is that?

The COURT.—Nor'west. 3/26, I don't understand that.

Mr. PETERS.—Does the Court understand it? If the Court understands it it is all right. Mr. Withington understands it, so we are not misleading him. Anything that we do not understand, that [289] is to our prejudice.

The COURT.—Well, I do not understand those figures.

Mr. PETERS.—That is why I am asking the witness.

(Argument.)

Mr. WITHINGTON.—I withdraw the objection.

The COURT.—Go ahead, then.

Mr. PETERS.—Yes, let's have it.

(Testimony of Wong Wong.)

The COURT.—Here, 52 feet 2x4.

(Question put by interpreter.)

A. Three pieces 26 feet long—Well, that is the total, one and sixty-two feet is the total of three times—is the product of 3 times 52.

Q. That is the 3 times 52—

A. Oh, that is the total of 110 plus 52. 162 is the sum of 110 plus 52. That is the total for the two items.

Mr. PETERS.—All right. What was the reasonable value in October of 1 keg 6d G. C. nails?

A. There were two prices at that time. Some were sold at nine and the other at 11. I don't remember what.

Q. Some at nine and others at eleven a keg?

A. For one hundred pounds?

Q. Well, how much a keg? How much to a keg? One hundred pounds to a keg?

A. One hundred pounds to a keg.

Q. That is nine and eleven dollars? A. Yes.

Q. What was the reasonable value at that time of iron rods, bolts and washers?

A. Twelve and a half cents a pound.

The COURT.—How much a pound?

A. Twelve and a half cents.

Mr. PETERS.—Q. What was the reasonable value at that time of one ro. 48x2, 1 t. P. Netting, 50 yards? [290]

Q. Per square foot—

The INTERPRETER.—He wants to know the size of it again.

(Testimony of Wong Wong.)

Mr. PETERS.—One roll of 48 by 2, 1 t. P. Netting, 50 yards?

A. Four dollars fifty cents one roll, 100 feet. Some were sold at \$3.50.

Q. What was the reasonable value at that time of No. 3 rock, October the 14th?

A. \$3.75 per yard.

Q. \$3.75 per yard, eh? What was the reasonable value at that time of 8d galvanized wire nails per keg? A. Four dollars—

Q. October 7th?

A. Four dollars a hundred pounds.

Q. What was the reasonable value at that time of 30-penny G. W. nails per keg?

A. \$3.90 per hundred pounds.

Q. What was the reasonable value at that time of cement per bag? A. \$2.65 for four bags.

Q. \$2.65 for— A. Four bags.

Q. For four bags?

The COURT.—That would make a barrel, would it? A. A barrel; yes.

Mr. PETERS.—Q. What was the reasonable value at that time of six feet 26-inch gauge of corrugated iron per sheet or per pound?

A. Per pound; not per feet. Four and a quarter cents per pound.

Q. What was the price of—

A. Might have been four and a half cents according to the Lewers & Cooke's price.

Q. What was the reasonable value at that time of S. H. nails?

(Testimony of Wong Wong.)

A. I don't understand what S. H.? Anything more than that? [291]

Q. That's all it says—S. H. nails.

Q. I don't know what number of nails you want.

Q. What was the value—

Mr. WITHINGTON.—That is a typographical error.

Mr. PETERS.—You understand it, Mr. Withington?

Mr. WITHINGTON.—Yes.

Mr. PETERS.—Did you get any credit for the empty bags? Did you return those to Lewers & Cooke? A. Yes.

Q. How much credit did you get, if you know?

A. I don't know. It ranges from three up to five cents.

Q. What's that?

A. Three cents up to five cents.

Q. Well, how much credit did you get? Didn't you keep track of your credits?

A. Three and a half cents per bag.

Q. How many bags did you return on this job?

A. I didn't have anything to do with those; the Japanese returned them.

Q. Eh? A. The Japanese returned those bags.

Q. What Japanese? A. Nomura.

Q. Was he working for you or connected with you?

A. Yes, he got a subcontract for the cement work.

Q. Nomura did? A. Nomura.

Q. How much was the subcontract?

(Testimony of Wong Wong.)

A. Materials charged to my account.

Q. How much was this subcontract?

A. \$950.00.

Q. That was a subcontract for the cement work?

A. Yes.

Q. Were you buying other material from Lewers & Cooke at the [292] same time that you were buying this material which you claim was delivered to you and put into this building?

Mr. CASTLE.—We submit that is immaterial, to show other accounts what payments were made on all accounts during the period.

The COURT.—Allow the question.

A. Cement and brick, everything was bought from Lewers & Cooke.

(Recess.)

AFTERNOON SESSION—February 1, 1917.

WONG WONG recalled for further cross-examination.

(By Mr. PETERS.)

Mr. PETERS.—Have you got the contract yet—

Mr. CASTLE.—No.

Mr. WITHINGTON.—We are able to show, I think, Mr. Peters, that this is an exact copy of the contract, except the signature, by a man that was present.

Mr. PETERS.—Q. Mr. Wong Wong, will you please state what subcontractors there were on that job up there?

Mr. CASTLE.—I submit that is immaterial, your Honor.

(Testimony of Wong Wong.)

The COURT.—How is it material, Mr. Peters?

Mr. PETERS.—I want to find out, if I can, your Honor, whether or not any of this material that is declared upon here in the notice of lien and the complaint against this defendant Wong Wong, was, as a matter of fact, furnished somebody else on somebody else's credit, or the further proposition, if the Court please, as to whether or not the notice of lien should be against the subcontractor and not against the contractor.

(Argument.) [293]

The COURT.—Well, go ahead.

Mr. PETERS.—Ask the question, please, Mr.—

The COURT.—That is, what subcontractors did you have?

Mr. PETERS.—Yes.

(Question put.)

A. Only the one who did the cement work.

Q. Only the one. Was that a written or an oral contract between yourself and Nomura?

A. Oral contract.

Q. Oral contract.

Mr. CASTLE.—My objection on this line.

Mr. PETERS.—Yes, it is understood.

The COURT.—Yes, the objection goes to all this. Had you put in an exception?

Mr. CASTLE.—I have; yes.

Mr. PETERS.—Q. And when was that contract entered into with Nomura, Mr. Wong Wong?

A. As soon as I signed my contract I turned it over.

(Testimony of Wong Wong.)

Q. As soon as you signed your contract. That is, your contract with the Honolulu Skating Rink?

A. Yes, sir.

Q. The same day? A. Different day.

Q. How long after your contract with the skating rink?

A. A matter of two or three days, three or four days.

Q. And what was your contract with him?

A. He was to do the cement work according to the plan and I was to furnish the material.

Q. What's that?

A. And I was to furnish the material.

Q. You were to furnish the material?

A. And I was to deduct so much from the—from the contract for material. [294]

Q. And did you order or did Nomura order this cement that is contained in Plaintiff's Exhibit "A"?

Mr. CASTLE.—The same objection.

The COURT.—Understood.

Mr. PETERS.—And did you see the cement delivered?

A. I did.

Q. How much was there?

A. I don't remember exactly how many bags, but there were several hundred bags.

Q. Did you see it all used in the building?

A. Yes, all used.

Q. Were you around there all day?

A. I was there six hours during the day.

Q. How many?

(Testimony of Wong Wong.)

A. I was there six hours during the day.

Q. Six hours during the day. And do you mean to say that every bag of cement that you ordered from Lewers & Cooke you saw go into that work?

A. Yes, and I have had a foreman at that time to watch that.

Q. But I am asking if you, with your own eyes, saw every bag of cement go into that building?

A. Yes.

Q. Every one? A. Every one.

Q. Did you see the cement work done?

A. Yes.

Q. And what kind— What was the thickness of that cement work? A. Four inches.

Q. Four inches, you are positive of that, that all the cement work up there is four-inch cement, is it?

A. That is according to the contract, four inches was the thickness but the outside part of it was three and one-half inches. [295]

Q. What do you mean by the outside part, three and one-half inches?

A. The part near the wall and near the platform was to be three and one-half inches thick.

Q. Give us an idea of what area that was that was to be covered by three and one-half inch cement.

A. Well, the superintendent was there every day.

Q. What is that?

A. There was a superintendent there.

Q. I am asking you how much—what was the area of this three and a half inch cement.

(Testimony of Wong Wong.)

A. I did not measure it.

Q. What's that? A. I didn't measure it.

Q. You didn't measure it? Where are the specifications of this job? A. The plans?

Q. Or either of them?

A. That is in the hands of the architect.

Q. What became of your copy?

A. I turned it over to the architect as soon as the work was finished.

Q. Now, was that material delivered up there on the job at the times indicated in the bill of particulars attached to plaintiff's complaint?

A. They were not delivered in one day, every day we usually have something.

Q. Yes, but what I am asking you is, were they delivered at the times indicated, the respective times indicated in the exhibit which has been called to your attention? A. Yes.

Q. And what was the date of your contract with the skating rink? [296]

A. It was some time in September; the exact date I cannot remember now.

Q. The copy as furnished by counsel for plaintiffs places it,—the date indicated there is the 20th of September, 1914?

A. 20th of September, 1916.

The COURT.—1914.

Mr. PETERS.—I will ask you if that is the date that you entered into this contract with the skating rink for the building of that building.

A. Yes, that was the date.

(Testimony of Wong Wong.)

Q. September 20th, 1914? A. Yes.

Q. Now, what was the total amount that you bought and—from Lewers & Cooke for this job?

A. \$1305 plus another bill of \$1800.

Q. What was it? A. \$1305 plus \$1800.

Q. It was three thousand one hundred and five dollars; is that the idea?

A. Yes.

Mr. WITHINGTON.—That is not what he said.

Mr. PETERS.—I think that is what he said, \$1305 plus \$1800—isn't that what he said?

The COURT.—That is what he said.

Mr. PETERS.—Of what are those two items made up? A. It is for lumber, zinc, nails.

Q. How do you—What is the idea—Why do you segregate the aggregate of \$3105 into those two amounts of \$1305 and \$1800; what was the significance of that?

Mr. CASTLE.—I submit that is immaterial your Honor.

The COURT.—Oh, I think that we may go fully into the details. I don't see its materiality particularly. [297]

Mr. PETERS.—It may not develop anything material. I don't know, your Honor. Answer: There were three statements, one amounting to \$1305 and the other \$1800.

Q. I see, and statements from Lewers & Cooke?

A. Yes.

Q. Now, what was your total indebtedness to Lewers & Cooke for all—all your indebtedness?

(Testimony of Wong Wong.)

What was your total indebtedness from whatever transactions you had previously had to Lewers & Cooke on the 11th of December, 1914?

Mr. CASTLE.—I submit that is immaterial and not proper cross-examination.

(Argument.)

Mr. CASTLE.—We have asked him nothing on this line on direct examination, and for that reason we submit our—

Mr. PETERS.—Do you object to it on the ground it is not cross?

Mr. CASTLE.—Yes, and on the ground it is immaterial.

(Argument.)

The COURT.—It would seem to me that you are at liberty to prove that he made any payments to Lewers & Cooke after the purchase of this material and between that time and the date of the filing of the lien; then, if he did, it would be a matter to thresh out as to where it should be applied.

Mr. PETERS.—Very well, we are satisfied with that ruling. Will you please tell me—I will withdraw my question.

The COURT.—There is nothing now before the Court; go ahead.

Q. Mr. Wong Wong, will you please tell me what money, if any, you have paid Lewers & Cooke since the—upon and since the 20th of September, 1914?

Mr. CASTLE.—We object, your Honor, on the ground it is immaterial; it is not proper cross-examination.

(Argument.) [298]

(Testimony of Wong Wong.)

The COURT.—I allow the question.

Mr. CASTLE.—Then we will except.

(Question put.)

A. I did not receive any money so I did not pay them anything.

Mr. PETERS.—Do I understand you that you have not paid Lewers & Cooke a dollar of money upon or since the 20th of September, 1914?

The COURT.—And up to the time of the filing of the lien?

Mr. PETERS.—Up to the time of this suit, your Honor, or up to now. We are entitled to whatever credit, if the Court please, that we can show should be applied to this claim, even to now.

Mr. CASTLE.—I object to the question again in the form in which it is now. I know of no such law as that.

The COURT.—Go ahead.

Mr. PETERS.—Ask the question.

Mr. CASTLE.—Take an exception.

A. I got an order from the architect for the first payment and I turned down the order to Lewers & Cooke. How much they collected I don't know.

The COURT.—How much was that order, if you remember?

A. Two thousand dollars.

The COURT.—Let me clear up a matter here, Mr. Peters. I find this credit, less \$520, paid on account; what do you know about that?

Mr. WITHINGTON.—We object to that as not proper cross-examination.

(Testimony of Wong Wong.)

The COURT.—It is my question. I think I will allow it.

Mr. WITHINGTON.—Exception.

A. That was—This is for extra work.

Mr. PETERS.—Q. What's that?

A. Extra work, not under the contract. [299]

Q. Oh, this \$520.00 was for extra work not under the contract, is that correct? A. Yes.

Q. Well, how did it get into the hands of Lewers & Cooke? Did you collect this and hand it over to them?

Mr. CASTLE.—My exception will apply all along the line?

The COURT.—Yes.

Mr. WITHINGTON.—We will show all about the \$520 when we get to the man who does know.

A. I did not collect the \$520. It was a reduction on the part of the architect.

The COURT.—What do you mean by a reduction?

Mr. PETERS.—I don't think he knows very much about it, if the Court please, and that is just exactly what I am trying to get at here. I want to know from you, Mr. Wong Wong, irrespective of this particular skating rink contract, or any other contract, what moneys, if any, you have paid to Lewers & Cooke upon and since the 20th of September, 1914, for whatever purpose. I just merely want the amount.

Mr. WITHINGTON.—Now, I understand that our objection applies to this whole line?

(Testimony of Wong Wong.)

The COURT.—Yes.

A. Yes; not on this job though; I have paid to them every month.

Mr. PETERS.—Lots of amounts, eh?

A. Yes, lots of amounts.

Q. Well, will you please tell us what amounts you have paid to Lewers & Cooke upon and since the 20th of September, 1914?

A. I cannot remember; it must have been over a hundred thousand dollars.

Q. What's that? [300]

A. It must have been over one hundred thousand dollars.

Q. Do you keep any books?

A. I gave them a receipt whenever I get the money for paying out my employees.

Q. Yes, but what I want to know is, have you got any memorandum of your payments to Lewers & Cooke? A. Yes.

Q. Where is it? Will you produce it, please.

A. Not here. I have it.

Q. And when you made— Or what was the extent of your indebtedness to Lewers & Cooke at the time that you entered into the contract for the building of the skating rink?

Mr. CASTLE.—I assume this is all on the same line?

The COURT.—Yes, your objection goes to all this.

Mr. CASTLE.—And exception?

The COURT.—And your exception?

(Testimony of Wong Wong.)

The INTERPRETER.—He said \$3,105.

Mr. PETERS.—No, I want to know what his total indebtedness was at the time he entered into this contract.

A. I cannot tell you how much it was.

Q. Can you approximate it?

A. It is not a month when the account was cleared so I cannot tell you.

Q. It was not a month when the account was cleared. Well, now, when you paid these sums of money to Lewers & Cooke subsequent to the 20th, upon and subsequent to the 20th of September, 1914, did you say anything to them as to what jobs it should be credited upon?

A. Yes, an account for each job.

Q. There was an account for each job?

A. Yes.

Q. And in each case you went and told them what to do with it, [301] did you? A. Yes.

Q. In every one of them?

A. Every job the same way.

Q. And why is it that you did not pay this bill to Lewers & Cooke for this particular skating rink job?

A. I did not receive any money for that job so I couldn't pay them anything.

Q. You did not receive any money for that job and hence you did not pay them, is that the idea?

A. That is the idea.

The COURT.—Q. Now, you have mentioned a two thousand dollar order that was given you by

(Testimony of Wong Wong.)

the architect. Did you pass that order right over to Lewers & Cooke? A. I did.

Q. And you do not know how much money they collected on it or whether they collected anything?

A. I don't know whether they collected anything at all.

Q. But you personally, did you ever get a dollar at all from the skating rink, come into your hands?

A. Not a cent.

Mr. PETERS.—Q. Never got a cent? And when you passed over that order to Lewers & Cooke for two thousand dollars did you tell them that that was to be applied on the skating rink job?

A. Yes, I did.

Q. Yes.

The COURT.—I would like to clear up this little point: Do you know how it happened that that order was not paid or that you were not paid for your work on it?

A. I don't know anything about it, but, according to the contract, I was to receive so much at such a time and I turned [302] over the order to Lewers & Cooke and they were to look after that. I don't know anything about it.

Mr. PETERS.—Q. Well, you have never, then, received a single penny on this contract?

A. Not a cent.

The COURT.—Q. What was the amount of the contract?

A. Six thousand four hundred and sixty-three dollars.

(Testimony of Wong Wong.)

Mr. PETERS.—Q. Now, all these payments that you made to Lewers & Cooke, since the 20th of September, 1914, you made personally, yourself, did you? A. Yes.

Q. Did you ever get a receipt from Lewers & Cooke for this two thousand dollars, the order for which you received from the architect?

A. They did not because they did not collect the money. They did not eat the money.

Q. Did you get a receipt? That is what I am talking about.

Mr. WITHINGTON.—I submit he has answered the question.

The COURT.—He said “I didn’t” and gives a reason.

Mr. PETERS.—Now, what was this extra work that you are speaking about?

A. Two—the building was to be raised two feet above.

Q. The building was to be raised two feet ?

A. Higher than ord—than the contract called for.

Q. And was that a separate contract?

A. That was an oral contract between the—Gill and myself.

Q. An oral arrangement between Gill and yourself? A. Gill and Ikeda and myself.

Q. And what arrangements did you make as to the cost of that extra or addition? [303]

A. I charged that accordingly, that is, according to the material and labor applied on the job.

Q. And how much was it?

(Testimony of Wong Wong.)

A. Altogether five hundred and fifty dollars.

Q. Altogether five hundred and fifty dollars, both labor and material? A. Yes.

Q. Did you ever get paid for that? A. No.

Q. Well, what connection has that five hundred and fifty dollars got with the five hundred and twenty dollars credit that is contained in the statement attached to the complaint, if any?

A. There was some more extra work in making those benches.

Q. Making what? A. Benches.

Q. Who did you make that arrangement with?

A. Well, with Gill and Ikeda.

The COURT.—What, then, was the grand total of the amount of your written contract and modifications?

A. Only two items, five hundred and fifty dollars plus six thousand four hundred and sixty-three; \$6,463 plus \$550 was the grand total of the job.

Q. Well, what was the price of the benches?

A. The architect accepted my bill for \$550 for extra work.

Mr. CASTLE.—May it please the Court, I want to find out— What the extras amounted to were not included in this lien, and so, I submit that any further examination is immaterial.

Mr. PETERS.—Was any of this material that was furnished by Lewers & Cooke used in those benches? A. Yes, all included there. [304]

Q. How much?

A. Little over two hundred dollars.

(Testimony of Wong Wong.)

Q. Eh? A. A little over two hundred dollars.

Q. Do you know how much over?

A. About two hundred and fifty dollars.

Q. \$250. That is to say, you bought \$250 worth of material from Lewers & Cooke and used it in making benches?

A. And also for raising the building two feet.

Q. Well, we are talking about the benches?

A. About eighty dollars for benches.

Mr. PETERS.—About eighty dollars for material used in the benches, is that correct? A. Yes.

Q. Those are movable benches, aren't they?

A. Some of them movable and some were not.

The COURT.—Well, are the others built in or are they merely nailed down to the floor? A. Nailed.

Q. Nailed to the floor, I do not quite understand yet from you what connection this \$550 had, for extras, with the \$520 credit in the statement?

Mr. WITHINGTON.—Object to that. It has been asked and repeatedly answered.

The COURT.—It has been asked several times but not answered. I have not struck the connection, if there be any.

(Argument.)

Mr. PETERS.—Will you proceed, sir, and answer that question?

(Question put to witness.)

A. Altogether it may have been one thousand and—one thousand and seventy dollars.

Q. What's that? [305]

(Testimony of Wong Wong.)

A. Five hundred and fifty dollars plus five hundred and twenty dollars.

Q. Five hundred and fifty dollars plus five hundred and twenty?

A. One thousand and seventy dollars.

Q. Well, we can figure that up. We want to know what you are talking about. We can figure five hundred and fifty and five hundred and twenty.

A. Oh, at first the whole bill was for \$1070 and after the reduction that was made it reduced it to \$550 and the \$520 was the credit given to me.

Q. Why was it reduced from \$1070 to \$550.

A. Well, according to the architect's advice I did that. He said, "If you reduce the bill to that much why, it will be easy for you to collect. They have no money to pay you."

Q. Did you collect this \$520?

Mr. WITHINGTON.—Wait a minute. I object on the ground he has already answered that once or twice.

The COURT.—I declare I do not understand it. If he has I cannot understand whether that represents cash or what in the world it represents.

(Argument.)

The COURT.—Go ahead.

Mr. PETERS.—Ask him to repeat, if he collected this \$520? A. No.

Q. Who collected it, if you know?

A. I don't know who collected it.

Q. When was the first time that you knew that you had a credit on this bill of \$520?

(Testimony of Wong Wong.)

Mr. WITHINGTON.—I object to it.

Mr. PETERS.—I will withdraw the question. Mr. Wong Wong, what material was on the job when you finished it? [306]

Mr. CASTLE.—We submit it is unintelligible. It is not proper cross-examination.

The COURT.—It is quite intelligible to me. I think it is perfectly proper to find out if any material, and, if so, what material was left over.

Mr. WITHINGTON.—Oh, I had not heard that question asked.

The COURT.—Well, that is what this question means.

(Question put.)

A. It was turned over to Lewers & Cooke, whatever there was left.

Mr. PETERS.—Q. What was it? A. 6x8's.

Q. There were some 6x8's. What lengths?

A. I don't remember what was the length.

Q. You don't remember the lengths. How many pieces of 6x8's?

A. I don't remember how many but the whole thing amounted to thirty or forty dollars.

Q. Thirty or forty.

The COURT.—Well, which was it, thirty or forty?

A. Between thirty and forty dollars.

Q. Did you get a receipt for it?

A. Yes, I had a receipt. That was deducted on the bill.

Mr. PETERS.—Can you show the credit on this bill? (Showing.) A. Here. (Showing.)

(Testimony of Wong Wong.)

Q. They have only credited you with \$14.40; did you keep any record of the material that you sent back to Lewers & Cooke?

A. I didn't keep any memorandum.

Q. You don't—you didn't? A. I did not.

Q. But your best impression is that it was valued at about thirty or forty dollars—thirty to forty dollars?

A. Probably some credit for nails, and I paid that afterwards. [307]

Q. What's that?

A. Credit for nails that were not used.

Q. The 14.40 is for—

A. Includes also nails.

Q. Is that the— A. No—

Q. The thirty or forty dollars?

A. —includes also returning the nails, and I paid the others, I paid the nails.

Q. Did it include the empty cement bags?

A. The Japanese was to receive the credit for the bags.

Q. Well, did you send them back to Lewers & Cooke? A. The Japanese sent them back.

Q. To Lewers & Cooke? A. Yes.

The COURT.—Do you mean by that that you passed over the cement bags and all to the Japanese and that the bags became his?

A. Yes, the bags belonged to the Japanese.

Mr. PETERS.—Yes, but, as I understand it, you further testified that the Japanese sent the bags back to Lewers & Cooke.

(Testimony of Wong Wong.)

The COURT.—Well, he was stealing his own bags, at that rate.

(Argument.)

Mr. PETERS.—Q. Well, then, as I understand it, you never received any of your credits, yourself personally for the return of these bags? A. I did not.

Mr. PETERS.—I think that's all, your Honor.

Redirect Examination.

(By Mr. CASTLE.)

Q. Do you know of your own knowledge whether or not the Japanese returned the bags?

A. I don't know. The bags belonged to him. Whatever he do I can't tell. [308]

Q. Mr. Wong Wong, on the bill down here is a credit of \$14.40 and in your statement you said that there were materials of the value of about thirty to forty dollars; which is correct?

A. That thirty or forty dollars included unused nails and other short pieces of wood. I bought them.

The COURT.—Q. You say you bought them. From whom?

A. That was left. That is, thirty or forty dollars worth of material, I returned the—

Q. Fourteen dollars worth?

A. \$14.40, and the rest were nails and others—

Q. You kept yourself? A. Yes.

Mr. PETERS.—Q. Oh, just one question I forgot to ask, as to whether or not this unused material was of the same material furnished by Lewers & Cooke. May I ask that, your Honor? Will you put the question to him as to whether or not this surplus

(Testimony of Wong Wong.)

material was of the same material furnished by Lewers & Cooke? A. Yes, a little over ten dollars.

The COURT.—A little over ten dollars, but here you say it was between thirty and forty, to start on, and you take out fourteen dollars and forty cents.

The INTERPRETER.—And he kept a little over ten dollars.

The COURT.—Well, that would make twenty-four. A. Between \$15 or \$16.

Q. Well, what becomes of your estimate of between thirty and forty in all, then?

A. Yes, between thirty and forty dollars.

Q. And suppose we say \$35, that is halfway between. Of that \$35 you returned back \$14.50, \$14.40 you turned back to Lewers & Cooke and that was credited upon the bill and that is all you did turn back? A. Yes. [309]

The COURT.—All right. Anything more, gentlemen?

Mr. PETERS.—I want it understood, if the Court please, that I may recall this gentlemen for cross-examination upon the production of the contract.

(Recess.)

Mr. CASTLE.—Q. Mr. Wong Wong, in testifying as to the value of Number 3 rock, you stated that it was \$3.75 per yard. What was the price per load?

A. Depends on how big the load is.

Q. Yes. Do you know—don't you mean that the price is \$3.75 per load? A. One yard, cubic yard.

Q. Per cubic yard. That is right. Do you know how many cubic yards ordinarily in a load?

(Testimony of Wong Wong.)

A. Two cubic yard in a load.

Q. As a matter of fact, isn't it two and a half?

The INTERPRETER.—He is talking about drayage; he doesn't know how much that is.

The COURT.—One and a half, two and a half are the figures the draymen give me when I get anything in that line.

Mr. CASTLE.—I show you, referring to Exhibit "A," four yards No. 3 rock, price quoted a dollar and a half. A. That is for drayage, isn't it?

Q. Is that for drayage? A. That is for drayage.

Q. Are you sure that isn't the—

A. You can't get that at a dollar and a half per cubic yard.

Mr. CASTLE.—No further questions.

Mr. PETERS.—I would like to ask one further question on cross-examination, if the Court please, that perhaps properly should have been asked before. In the case of Wong Wong against the Honolulu [310] Skating Rink, Limited, you have admitted the receipt on account of this job of twenty-four hundred dollars—will you please—twenty-four hundred seventy dollars. Will you please explain that, in view of you other testimony given here?

Mr. WITHINGTON.—Wait a minute. I think we have—I think—we object to this question, not on the ground that it is not proper recross,—I don't care anything about that particularly, but on the ground that we previously made an objection on, that it is not proper cross-examination. We didn't ask anything along those lines, and on the further ground

(Testimony of Wong Wong.)

that it is immaterial, and on the further ground that it does not appear that he has made this admission. Those papers in that case are not in evidence here.

(Argument.)

Mr. PETERS.—I hand you here what purports to be the complaint of Wong Wong against the Honolulu Skating Rink, Law No. 8145, and ask you if you were the plaintiff in this case? A. Yes.

Q. And this is your signature to the complaint? (Showing.) A. Yes.

Q. All right. Now, I will ask you if you remember swearing to that complaint before W. A. Greenwell? A. Yes.

Mr. PETERS.—We will offer it in evidence, if the Court please.

Mr. WITHINGTON.—Object to it as immaterial, not proper cross-examination.

The COURT.—Where is the material?

(Argument.)

Mr. PETERS.—Without offering it in evidence, I will ask you to please explain your evidence here, your statement in this complaint, that the Honolulu Skating Rink paid on account of this [311] contract the sum of \$2470, and your statements previously made on cross-examination that they had not paid anything nor have they paid you anything?

Mr. WITHINGTON.—Well, we object to the question on the ground that it is not proper cross-examination. We have not brought out anything on the—other than the matter having been brought out

(Testimony of Wong Wong.)

by the defense, and on the further ground that it is immaterial in this case.

The COURT.—I will overrule that objection.

Mr. WITHINGTON.—I have not finished.

The COURT.—Proceed.

Mr. WITHINGTON.—The only material thing being, not what the witness on the stand has paid but what had been paid to Lewers & Cooke; the only defense in this action. There will be no defense no matter what was paid to Wong Wong.

(Argument.)

The COURT.—I will allow the question.

Mr. WITHINGTON.—Exception.

A. I didn't have any authority to receive any money or to collect any money. I did not receive anything.

Mr. PETERS.—Upon what did you base that allegation that the skating rink had paid \$2470?

Mr. WITHINGTON.—I object to that as immaterial, what he based it upon.

(Argument.)

The COURT.—I will allow it.

Mr. WITHINGTON.—Save an exception.

A. I got two orders, one for two thousand and another for another two thousand and probably that was the amount that Lewers & Cooke did collect on those orders. [312]

Mr. PETERS.—You got two orders, did you?

A. I got one and the second did not—I did not receive the second one but, before the money was to be

(Testimony of Wong Wong.)

paid, they promised to pay the whole sum by installments.

Q. Yes, but what I want to know is, do you know, or did you know at the time that you signed that complaint, of your own knowledge, that they had received twenty-four hundred seventy dollars?

A. I knew that there was an amount paid but not through my hands.

Q. Well, who told you that the—

Mr. WITHINGTON.—Well, I submit that this is—I wish to renew the objection. We will have a witness on the stand who knows all about this. This man doesn't know a thing.

(Argument.)

Mr. WITHINGTON.—Well then I entirely misunderstood the witness, perhaps because I knew the facts.

The COURT.—He stated most decidedly that he had not received one cent for this work, and then there is handed to him a sworn statement of his wherein he states that he had received twenty-four hundred seventy dollars, and he is asked to explain it, and he explains it in the way that you have just now heard, and counsel now asks him, "What is the basis of your belief that that money was paid? Who told you so?" I think he has the right to find out the basis of his belief.

Mr. WITHINGTON.—Very well, we except to the ruling.

A. Lewers & Cooke.

Mr. PETERS.—Q. Who of Lewers & Cooke told

(Testimony of Wong Wong.)

you that \$2470 had been paid on account of this job to them?

A. Mr. Swain that used to work there.

Q. Mr. Swain that was formerly the cashier there? [313]

A. Yes.

Mr. PETERS.—That's all.

Re-redirect Examination.

(By Mr. CASTLE.)

Q. Mr. Wong Wong, did Lewers & Cooke advance you any cash on this job?

Mr. PETERS.—I object to it as immaterial. The situation in respect to the advance of cash, if the Court please, we are not interested in.

The COURT.—I sustain the objection to that.

Mr. CASTLE.—Take an exception. We offer to prove, your Honor, by this witness, that Lewers & Cooke advanced him \$1950 cash on this job, which was to be repaid out of the first cash which came in.

Mr. PETERS.—That is just the reason why the Court, if the Court please, is—

Mr. CASTLE.—On a note—on an order, your Honor.

Mr. PETERS.—Well, we object, if the Court please, to the offer of proof.

(Argument.)

The COURT.—Here, gentlemen, is the situation revealed: Lewers & Cooke sold some thirty-one hundred dollars worth of material for which, under certain circumstances, they may have a lien. In addi-

(Testimony of Walter R. Coombs).

tion to that they loaned this man individually some nineteen hundred dollars—

Mr. CASTLE.—That was not my question, your Honor. My question was, wasn't the sum of \$1950 advanced to you by Lewers & Cooke on this job.

The COURT.—Very well, call it “advanced upon this job,” it was a loan to him. You do not expect a lien for that \$1950, do you? [314]

Mr. WITHINGTON.—No.

(Argument.)

The COURT.—I decline the offer of proof.

Mr. CASTLE.—To which we except.

Mr. PETERS.—That is all, your Honor, as far as we are concerned, with this witness.

Mr. CASTLE.—That is all.

Testimony of Walter R. Coombs, for Plaintiff.

WALTER R. COOMBS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. And what is your business?

A. Cashier of Lewers & Cooke, Limited.

Q. What was your business during the times mentioned in this complaint?

A. The same. I might verify that; I am not positive of that very date, whether Mr. Swain was in the office,—if he was I would have been assistant cashier, but doing exactly the same things as I am to-day with the title.

(Testimony of Walter R. Coombs.)

Q. Mr. Coombs, what knowledge, if any, have you of the contract between the Honolulu Skating Rink and Wong Wong?

A. It was brought to me first by George Ikeda.

Q. Who is George Ikeda?

A. He was—had formed a company called the Honolulu Skating Rink, and posed as its treasurer, and said that they had given the—a contract for the erection of a building on that lot just mauka of—just mauka of the Sachs building, and said that the contract had been awarded to Wong Wong, and would we go on his bond—

Mr. PETERS.—We object to all this as hearsay and not binding on us.

The COURT.—I will allow it. [315]

Mr. PETERS.—Exception, your Honor.

A. I went up to Judge Lymer's office, who drew the contract, and went over the contract thoroughly and to see whether we felt that Wong Wong could build the building for that amount of money, sixty-four hundred dollars sixty-five hundred, more or less, and satisfied ourselves that we would go on the bond. The contract was—the original contract was changed on account of the payments to be made on the contract, and finally the contract read that the first payment of two thousand—

Mr. PETERS.—Well, I object to that, if the Court please, not the best evidence. We are entitled to that contract.

The COURT.—Well, I think that objection is good, gentlemen, as to the contents of the contract.

(Testimony of Walter R. Coombs.)

Q. Well, anyhow, after the so-called contract was signed, why—

Mr. CASTLE.—Do you know anything about the signing of the contract? A. Yes.

Q. Well, will you please state to the Court?

A. The contract was signed—I won't say in my presence; as a matter of fact I don't think it was—but it was signed by Fred Ohrt as president of the Honolulu Skating Rink, and George Ikeda as treasurer of the skating rink.

Mr. PETERS.—I object to all this and ask that it go out, as the contract is the best evidence of the signatures to it.

The COURT.—Well, it may be that he knows the signatures; I don't know.

The WITNESS.—I could testify to the signatures, Mr. Peters, if that would be satisfactory.

Mr. PETERS.—Q. You saw them sign?

A. I am not positive that I did not even see them sign, but I will swear positively that I could identify both Mr. Ohrt's signature and Wong Wong's, especially, as the contractor. Ikeda's [316] I probably couldn't.

Mr. CASTLE.—Q. Did you see the contract after it was signed?

A. Yes, I had it in my possession for some time.

Q. Do you know what has become of it?

A. I do not. I think it is in the hands of Tom Gill, the architect.

Q. Have you made search of it? A. I have.

Q. I show you a paper and ask you if you can

(Testimony of Walter R. Coombs.)

identify it as a copy of the contract to which you have testified,—carbon copy?

A. Yes, this is a carbon copy of it. I can indentify it by two or three specific things in it.

Mr. CASTLE.—We will offer this for identification.

The COURT.—It may be marked Exhibit 1 for Identification.

Mr. CASTLE.—Q. After the execution of this contract what, if anything, did Lewers & Cooke do regarding the delivery of materials or sale of materials to Wong Wong?

A. Well, we commenced at once to deliver the material as he ordered it for this particular contract.

Q. Have you examined the complaint in this case?

A. Yes.

Q. Bill of complaint. I will show you the complaint and ask you to examine it, particularly the Exhibit "A" thereto attached, and ask you if the exhibit correctly sets out the list of materials? I will ask you if the exhibit correctly sets out the list of materials which were delivered to Wong Wong?

A. Yes, sir, on that particular contract.

Q. Mr. Coombs, in your business as cashier, or as assistant cashier, what if anything did you have to do with the ascertaining of the market value of materials such as set forth there?

A. Well, I knew the market values at that time of all of the— [317] major portion of materials. There is no one man probably in office work that can

(Testimony of Walter R. Coombs.)

keep track of all materials. I knew perfectly that the base rate of nails was \$3.90; I did know at that time that the base rate was \$3.90. I knew also that the base of lumber would be thirty, forty dollars, as the case may be, and could figure up from there to find any price,—if this is in accord with your question. In pricing there is none of us depend upon our own selves for the exact price for any particular length or any particular size of lumber.

Q. Did you hear the testimony of Wong Wong?

A. Yes.

Q. On the 4th page, next to the last page of Exhibit "A" under date October 22d— A. Yes.

Q. —Wong Wong, as I recollect, testified that the second item, 46 feet 1x22 P. R. W. 1x12, 1x14, the price of that was \$55; have you any explanation to make as to that?

Mr. PETERS.—I object to this manner of examination, if the Court please. In the first place there is no foundation for Mr. Coombs to testify as to values. In the second place, if the Court please, Mr. Wong Wong was their witness; they have no right to call the attention of one witness to the evidence of another witness to seek, if the Court please, to impeach that other witness.

(Argument.)

The COURT.—What is the material, Mr. Castle?

Mr. CASTLE.—This is plain redwood.

The COURT.—Yes, I think the question may be asked. Possibly its form is objectionable, but the substance is, it seems to me, all right. [318]

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—I call your attention to Wong Wong's testimony. He said in his—originally that these prices were all correct and that it was on cross-examination, after two years and a half here, his attention was called to an article and he testified from recollection. Would you answer the question.

Mr. PETERS.—The Court allows it?

The COURT.—Yes.

Mr. PETERS.—Exception.

A. I can only answer that in this way: I don't believe he quite understood the question. He may have done that and still be five dollars under a thousand. I believe that I am quite conversant with the price of material and I might not have made a better success on plain redwood. Plain redwood is not always based on the price on lumber. Wong Wong's testimony was marvelous to me, not so much Wong Wong's ideas of lumber only; he could give prices of lumber, nails, cement and things of that sort. He is probably away above the average on giving things. I don't believe, personally, that there is but only one other man in Honolulu that would be able to give prices of material as well as Wong Wong.

The COURT.—Well, the simple point is, I understand, is as to whether these prices charged here are correct and whether you know it.

A. Yes, I do know it, but as I understood Mr. Castle's question, it was why he made this discrepancy of five dollars a thousand.

Mr. CASTLE.—You are just giving your opin-

(Testimony of Walter R. Coombs.)

ion as to why he made a mistake? A. That's all.

Q. Which would you say is correct, the sixty or the fifty-five?

A. I know that the sixty dollars is correct. [319]

Q. Now, further down, the 4th item, 80 feet 1x16 P. R. W., 3x20, \$56.50, which he gave as \$55; can you make any explanation there?

A. No, he was simply guessing on plain redwood; that is, I mean in giving values he did better at it than—it is very close.

Q. Which is correct?

A. Fifty-six and a half is correct, but there is no one who would be able to get exact prices within a dollar or dollar and a half a thousand.

Q. Referring you to about the 12th item, 257 feet 1x14, 10x22 Nor'west, which was given at \$31 by Wong Wong, \$32 on the bill, would there be anything in the length which would make a difference?

A. The length would make a difference, but I think I could explain that matter to you by saying that 1x12 and 1x14 used to be based exactly the same; that is, 1x12 the same length used to cost just the same as 1x14 of the same length. Now, 1x14 costs \$1.00 more than the 1x12, and did at this time.

Q. So that would make a difference of one dollar?

A. So that would make a difference of one dollar there.

Q. And how about the 96 feet 2x8 Northwest, 2/36, \$32.50, which was given as \$30?

A. He did not take into consideration that over

(Testimony of Walter R. Coombs.)

20 feet long is an extra length and that the extra is added.

Q. And that would make—

A. Thirty-two and a half is correct.

Q. Now, as to the price of No. 3 crushed rock. The charge here is \$1.50; will you explain that?

A. It is the charge put through to Wong Wong a dollar and a half per yard, and generally they figure on a load of rock, if [320] it is hauled by one of the big dray companies like Hustace Peck, there are two and a half yards to the load; some drays only two, and they generally figure on a price per load which is a dollar and a half per yard or three dollars for two yards, three dollars seventy-five cents for two yards and a half.

Mr. WITHINGTON.—Two yards and a half?

A. No, three dollar and a half a yard, two and a half yards would be \$3.75.

Mr. PETERS.—Rock is a dollar and a half a yard. Are you testifying that the reasonable value of No. 3 rock is a dollar and a half a yard?

A. Dollar and a half a yard—I wouldn't want to testify as to that; I wouldn't want to testify; this was two years ago. I will buy all this lumber at these prices too now.

Mr. PETERS.—We will sell it to you; we will take you right up on that proposition.

Mr. CASTLE.—Q. Mr. Coombs, what payments, if any, have been made on account of this job?

A. What accounts, if any, have been paid to Lewers & Cooke?

(Testimony of Walter R. Coombs.)

Q. Yes.

A. On account of the skating rink job? In the neighborhood of twenty-five hundred dollars,—twenty-four hundred and some odd—

Q. Twenty-four hundred and seventy dollars to be exact?

A. Yes, twenty-four hundred and seventy dollars, to be exact.

Q. Haven't you anything showing the exact amount?

A. Well, I could—I could refresh my memory by the bill there, \$2470. I haven't anything with me, no, to show the exact amount. \$2470 is correct; I am positive of that. I have not my own sheet to prove that.

Mr. CASTLE.—We will go into that when we have the books. [321]

Q. Could you state, Mr. Coombs, what demand, if any, you made in this case?

A. Why, I formally made demand on Wong Wong for the payments as the contractor of the job.

Q. The amount set forth in this?

A. Yes, for the amount; went over the entire bill with him and showed him what was due and what payments were due, and made formal demand on him for it.

Q. When was that demand made?

A. Well, it was before—it was right after the order was given me by Mr. Gill; the original order given by the architect, that the first payment was due; I made demand then, and we always do when—

(Testimony of Walter R. Coombs.)

ever we get an order, because the first order was the amount of two thousand dollars and we would naturally want that money in. I made demand then and then I afterwards made demand before this lien was filed.

Q. And any other demand made?

A. Why, after it was filed I wanted to make sure that we couldn't get anything more from the skating rink on it and I simply made demands from Wong Wong. Of course I could understand,—I don't know whether I am in order in answering this—

Q. After the lien was filed?

A. I made formal demand then; yes.

Q. And when in reference to the filing of the complaint, the bill of complaint? Well, I will withdraw that. How soon after the lien was filed did you make demand?

A. Oh, very shortly; I wouldn't want to say; two or three days or a day, I suppose.

Q. Could you say how soon after the lien was filed?

A. I could only say that it was a matter of a short time, a day [322] or so, something like that. I do know that formal demand was made right after the lien was filed.

Q. Yes, was that demand made for the purpose of this suit?

Mr. PETERS.—I object to it, if the Court please, as immaterial what purpose it was for.

(Argument.)

(Testimony of Walter R. Coombs.)

The COURT.—Gentlemen, you apparently both agree upon the point that demand is necessary, and, if it is, then evidence of a demand is material. Go ahead.

Mr. PETERS.—For what purpose, however? He is asking for what purpose he made the demand. I am contending, if the Court please, that the demand was necessary, but for what purpose he made it we are not concerned with.

The COURT.—State whether or not it was for the purpose of collection? A. It was.

The COURT.—All right.

Mr. CASTLE.—I suggest that we take an adjournment now. We will have to get the books tomorrow morning.

The COURT.—Very well, we will go ahead tomorrow at nine o'clock, gentlemen. [323]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

LAW 8142.

LEWERS & COOKE, LIMITED

vs.

WONG WONG.

February 2, 1917.

Direct examination of W. R. COOMBS, recalled.
(By Mr. CASTLE.)

Q. Mr. Coombs, what financial arrangement, if any, was made between the Honolulu Skating Rink,

(Testimony of Walter R. Coombs.)

Wong Wong and Lewers & Cooke in regard to this contract?

Mr. PETERS.—I object to the question as immaterial.

The COURT.—How is that material, Mr. Castle?

Mr. CASTLE.—Why, we have a right to show, your Honor, the—we have shown that the moneys were paid in by the Skating Rink to Lewers & Cooke. There is an assignment which we will offer. We intend to show the assignment of the moneys to Lewers & Cooke and the payment of the moneys to Lewers & Cooke in pursuance of this assignment.

Mr. PETERS.—What assignment are you speaking of?

Mr. CASTLE.—Speaking of the assignment that we now offer to follow up, after this question,—assignment of moneys due under this skating rink contract to Lewers & Cooke to be applied on the Wong Wong account.

The COURT.—I presume there would be no objection to that if the money was paid direct by the skating rink company to Lewers & Cooke. [324]

Mr. PETERS.—It seems to me that they are entitled to show that. I do not care to have any error in the record here. I think I will withdraw the objection.

Mr. CASTLE.—I intend to show the full facts in this case, and that is the reason I have asked the question.

A. Immediately after the contract was signed why—in consideration of the contract being signed and

(Testimony of Walter R. Coombs.)

right after it was signed, or simultaneously with it, it was all done practically the same day or days, why I obtained—had Wong Wong assign me their payments as they became due under the contract to us. The contract itself that has been admitted in evidence here shows how the payments were due on this contract, and, as we were obliged to—

Mr. PETERS.—I object to all this narration and move to strike it all out as not responsive to the question.

(Argument.)

Mr. CASTLE.—Rather unique, though, to move to strike on the ground it is not responsive. I have no objection to that particular feature going out. However, I have asked for the circumstances; he is now giving them.

Mr. PETERS.—I object, if the Court please, to any circumstances, and he was not asked about circumstances, he was asked about an alleged assignment, and it was upon that basis, if the Court please, that I withdrew the objection.

Mr. CASTLE.—Will you please read the question, the original question that was allowed. (To the official reporter.)

(Question read.)

A. There was a financial arrangement.

The COURT.—It is already answered that there was an assignment by Wong Wong of his rights to collect, assignments to Lewers & Cooke. [325]

Mr. CASTLE.—Is the answer finished there?

The COURT.—No, it did not finish there, there

(Testimony of Walter R. Coombs.)

is some more, comments upon a contract that was stricken.

Mr. CASTLE.—Yes, that is all right. Now, will you go on, Mr. Coombs?

A. This contract was signed on the—or this agreement was signed, as the payments being due—shall I read that?

Q. I will ask you that in a minute. Well, have you— A. I have that with me.

Q. This paper which you hand me, paper dated Honolulu, Hawaii, September 25th, 1914—

Mr. PETERS.—Would you mind letting me see it?

Mr. CASTLE.—I was going to identify it.

Q. Do you know whose signature that is in the right-hand corner? A. Yes, sir.

Q. Whose is it? A. Wong Wong's.

Q. You know his signature?

A. Yes, very well.

Q. And the writing in red ink, what is that?

A. "Accepted, Honolulu Skating Rink, by Fred Ohrt."

Mr. PETERS.—I object to the witness reading it, if the Court please.

(Argument.)

The COURT.—Proceed.

Mr. CASTLE.—Referring to the writing in red ink in the left-hand side, do you know whose signature that is? A. Yes, sir.

Q. Whose it is? A. Fred Ohrt's.

(Testimony of Walter R. Coombs.)

Q. And what if anything did you have to do with this paper?

Mr. PETERS.—I object to the question, if the Court please, as incompetent, irrelevant and immaterial, assuming a fact not in [326] evidence.

Mr. CASTLE.—We now offer in evidence a purported assignment to Lewers & Cooke, Limited, of the moneys due on the contract with the skating rink.

The COURT.—Have you seen it, Mr. Peters?

Mr. PETERS.—Yes, your Honor.

(Shown to the Court.)

The COURT.—Any objection?

Mr. PETERS.—None at all, your Honor.

(Document introduced in evidence as Exhibit "B" for the plaintiff.)

Mr. CASTLE.—Q. Mr. Coombs, do you know if any money was advanced to Lewers & Cooke by Wong Wong on the skating rink job?

Mr. PETERS.—I object to the question as incompetent and immaterial and indefinite.

(Argument.)

The COURT.—I asked you yesterday if you claimed any lien for money advanced and I understood you to say that you did not.

Mr. WITHINGTON.—No, your Honor, we do not.

The COURT.—Very well, if you did not, then I would like to have it explained how the liens for material can still exist when the money or any part has been paid and paid also to the lienor?

(Argument.)

Mr. WITHINGTON.—May it please your Honor, I think we had better make an offer of what we will prove and have been trying to prove, if your Honor will allow us at this time

The COURT.—Yes, proceed with your offer.

Mr. WITHINGTON.—We offer to show, by this witness, by Mr. F. J. Lowrey, president of the plaintiff, and by Wong Wong, that, in consideration of the order, which is Exhibit “B,” Lewers [327] & Cooke agreed to advance certain cash for use on this job in the payment of labor and other items that went into it; that they did advance \$1950; that it was expressly agreed between Wong Wong and Lewers & Cooke, Limited, by an express agreement, that any moneys received under this order should be applied first to the cash advanced and then to the materials, and that Lewers & Cooke have made such application. Now, I challenge the record as to the statements of Wong Wong that he did not agree to any application, and the very offer of proof that we made yesterday when he was on the stand was to prove by him an exact agreement, an oral agreement by an oral agreement made at the time that these payments should be so applied to Lewers & Cooke, first to the cash advanced, but whether he did or not we did not put him on or examine him in chief along that line. We expected to prove that by Mr. Lowrey and Mr. Coombs, and we offer, in connection with the question which we are asking now, to prove those facts. We claim under the case which I have cited to your Honor

(Testimony of Walter R. Coombs.)

that they are clearly admissible.

The COURT.—You feel that the Allen & Robinson decision covers that?

Mr. WITHINGTON.—Yes.

(Argument.)

Mr. PETERS.—We object to this offer of proof as incompetent, irrelevant and immaterial, and submit, if the Court please, that, as far as the evidence developed here is concerned, it shows that Lewers & Cooke got an assignment of moneys to accrue, if the Court please, on the proposition that they were to furnish materials and that all moneys accrued subsequently should be applied on material.

(Argument.) [328]

The COURT.—I think my ruling ought to be, under the circumstances, in favor of permitting or accepting the offer of proof, because there are one or more defendants as to whom, it seems to me, it may be admissible, and this is without ruling definitely as to whether it may be admissible against and affect your clients. (To Mr. Peters.) Proceed with your proof.

(Question read.)

A. Yes.

Mr. CASTLE.—Q. What amount? A. \$1950.

Mr. PETERS.—This is subject, if the Court please, to my same objection and will be considered ultimately.

The COURT.—Yes.

Mr. PETERS.—Upon the decision of your Honor as to its effect upon Rosenbledt and Harrison?

(Testimony of Walter R. Coombs.)

The COURT.—Yes.

Mr. CASTLE.—Q. Referring you now to Plaintiff's Exhibit "B," I will ask you whether you made
A. Yes, I did.

Mr. CASTLE.—I will withdraw that question, that last question.

The COURT.—He has answered it; he says he did.

Mr. CASTLE.—Q. Do you know of any connection between Plaintiff's Exhibit "B" and the cash advanced to Wong Wong?

Mr. PETERS.—I object to the question as immaterial and attempting to vary the contents of a written instrument, to wit, the assignment admitted as Exhibit "B."

(Question read.)

Incompetent, irrelevant and immaterial and an attempt to vary the contents of a written instrument.

(Argument.)

Mr. CASTLE.—I will withdraw the question. Will you state the [329] circumstances connected with the advance of this cash to Wong Wong?

Mr. PETERS.—I object to the question as immaterial.

(Argument.)

We object to it, if the Court please, as hearsay and not binding upon these defendants.

The COURT.—It may not be binding upon your clients; remember that we are keeping that in sight all the way through, but, with regard to the skating

(Testimony of Walter R. Coombs.)

rink and Wong Wong it may be. Now, if you can speak of your own knowledge, Mr. Coombs, go ahead and answer the question.

The WITNESS.—Just repeat the question, Mr. Reporter.

Mr. PETERS.—We take an exception to the Court's ruling.

(Question read.)

The COURT.—That is, if you were an active participant, if you did any of the negotiating or if you were present when the negotiations were had or the request made.

A. Well, in consideration of this order that we have signed covering the full amount of the contract we agreed—Lewers & Cooke agreed with Wong Wong to advance moneys, as we always do on contracts, for this building, the skating rink—

Mr. PETERS.—I object to this, if the Court please, and move to strike it out as a conclusion of the witness, and it does not appear, if the Court please, as anything in which he directly participated; simply a statement of a conclusion.

The COURT.—Motion granted. You are asked to state what you personally saw and heard, not what Lewers & Cooke did; but you say that, in consideration of that, Lewers & Cooke did certain things; now, what do you personally know as having occurred before your eyes and ears? [330]

A. Well, then, while this is not personal for Lewers & Cooke, speaking of Lewers & Cooke, I was speaking for myself—I personally got this

(Testimony of Walter R. Coombs.)

order signed from Wong Wong, and, in consideration of that—

The COURT.—Now, then, when you got it signed by Wong Wong, what was said between you and Wong Wong with reference to advances?

A. Well, we had a regular understanding with the contractors, and had a specific understanding with Wong Wong on this case, that we would make certain advances for his labor.

Q. Now, when Wong Wong signed that or you asked him to sign it, what did you say to him or what did he say to you, if anything, concerning advances of cash?

A. I asked him about how much money he thought in cash he would need on this contract, how much money in cash he would need on this contract, and he told me that he thought he would need in the neighborhood of two thousand dollars, and I said to him— Shall I say this conversation with me?

Mr. WITHINGTON.—Certainly.

A. So that— We were anxious to get the thing through. The reason we had this assignment made and—

Mr. PETERS.—I object to this reason that he had this assignment made.

The COURT.—You said to him— Now, then, go ahead.

A. I said, “Wong Wong, one thing sure, I cannot advance you more than two thousand dollars in cash on this.” Then I took the matter up with Mr.

(Testimony of Walter R. Coombs.)

Lowrey, as I always did on all contracts, and arrangements was made with Mr. Lowrey and Wong Wong—

Mr. PETERS.—I object to what Mr. Lowrey did unless this witness knows it personally. [331]

The WITNESS.—I do know this personally.

The COURT.—I understand that he is testifying now of his own knowledge.

The WITNESS.—Yes, sir; this is of my own knowledge, and I took the matter up then with the president of our firm that we were to advance him two thousand dollars. Then Mr. Lowrey told me that he had made arrangements with Wong Wong that the two thousand dollars—up to two thousand dollars should be advanced, and out of moneys—

Mr. PETERS.—I object—

A. —paid on this order, and out of moneys—

The COURT.—Wait a moment, now; you are talking about hearsay.

Mr. PETERS.—I object to that, what Mr. Lowrey told the witness, unless it appears that it was an arrangement made with Wong Wong under the previous ruling of the Court. I do not concede that it is binding on these defendants, whom I represent.

The COURT.—Not what Mr. Lowrey told you, but when you and Mr. Lowrey conferred about the matter—in other words, you went to Mr. Lowrey and stated the circumstances, and, I suppose, recommended, did you, that not more than two thousand dollars should be advanced?

(Testimony of Walter R. Coombs.)

A. I wouldn't be surprised if I did, and I might add this, which has nothing to do with the question, that any arrangements that I make as their cashier and credit man of Lewers & Cooke I have to take up with Mr. Lowrey.

Q. Well, you did take this up?

A. I did take this up.

Q. And he approved your recommendation or at least approved of the advance of two thousand dollars? A. Yes, sir.

Q. Now, he having approved this recommendation of yours, was the— [332] the money then was advanced, was it?

A. From time to time it was.

The COURT.—Well, I leave it to the counsel now to get the details of those advances and dates. I ask you this further, was there anything further that you have thus far said between you and Wong Wong at the time that you told him that—that you asked him how much money he would require and he told you about two thousand dollars,—anything further than what you have already said?

A. Well, each week—I might explain that each week when he comes in for the cash advance, I was finding how far the building was getting along, to see that the advance did not get over the two thousand limit.

Q. No, you are not answering my question. It seems that when he signed this document, Exhibit "C," you said, "Wong Wong, how much money will you require to carry that job?" He replied,

(Testimony of Walter R. Coombs.)

“about two thousand dollars.” You responded, “Well, you may be sure I cannot advance any more than that.” Now, did the matter drop right there between you and Wong Wong?

A. No, it did not, because the moneys later were coming in from the skating rink.

Q. No, right then and there?

A. Well, that was probably the end of our conversation at that time, yes.

Mr. CASTLE.—Q. Mr. Coombs, can you give the amounts and dates of the advances to Wong Wong in pursuance of this agreement?

Mr. PETERS.—This is all subject to the same objection. What are you looking at now, Mr. Coombs?

A. My ledger sheet for the— I do not need to look at this. I could probably answer your question. We advanced the moneys during the month of October, 1914, to him. [333]

Mr. CASTLE.—Q. Well, my question: Can you give the amounts and dates?

A. Well, not without referring to my ledger sheet, I couldn't.

Q. Did you keep a ledger? A. Yes, sir.

Q. Have you the sheet with you? A. I have.

The COURT.—Q. Was there any other contract in which you—your firm, Lewers & Cooke and Wong Wong were mutually interested at that time?

A. Yes.

Mr. CASTLE.—We will object to that as immaterial, the Court's question.

(Testimony of Walter R. Coombs.)

The COURT.—Well, we will strike the answer then. We will consider your objection.

Mr. CASTLE.—Well, I just make the objection that it is immaterial.

The COURT.—Very well, it is material, I overrule it.

Mr. CASTLE.—We take an exception.

The COURT.—Upon this ground, that it may be very material, indeed, to segregate the two or more transactions and see which transactions applied to this and which to another.

Mr. CASTLE.—Will you refer to the sheet and give us the dates of the cash advances to the skating rink, and the amounts?

A. Well, October 5th, advanced to Wong Wong on the skating rink job, \$350, on the 10th—

The COURT.—Wait a minute—October 5th, \$350, you say, on the skating rink job. Are you reading that from the— A. Yes, sir.

The COURT.—Let me look at it. Skating rink—he had many different jobs, then, running at the same time, in which you were dealing with him in the same way that you were in this case, had he?
[334]

A. Yes; I wouldn't say in the same way. This was an accepted order; I don't know that that is the same way.

Q. Well, approximately, substantially the same?

A. We have—we sometimes give Wong Wong credit, knowing the other facts, without taking any accepted order.

(Testimony of Walter R. Coombs.)

Mr. PETERS.—Q. Since when have you done that? Since when have you taken any of these contracts of Wong Wong's and you have advanced when you have not got an assignment when the contract was signed?

Mr. CASTLE.—That will be brought out on cross-examination.

A. Well, October 5th, advanced cash on the skating rink job for \$750; on the 10th cash on the skating rink job, \$400; on the 17th cash on the skating rink job, \$400; on the 24th, cash on the skating rink job, \$400; and on the 31st cash on the skating rink job, \$400; total fourteen hundred—no, nineteen hundred and fifty dollars.

The COURT.—\$1,950. Do you know what was done with that money? A. Yes, sir.

Q. What was done with it?

A. Applied for labor. That is, I gave it—I took Wong Wong's receipt for this money for advances of labor on the skating rink job.

Q. And you don't know what he did with it?

A. I do not—I couldn't tell that. Of course at that time, your Honor, he tells me—

Q. Oh, well, never mind what he told you.

Mr. CASTLE.—Can you give us the dates and amounts of any collections you made under this order? A. Yes.

Q. Will you have to refer to a—

A. I would have to, yes, sir. [335]

Q. To what would you have to refer?

A. To the ledger sheet.

(Testimony of Walter R. Coombs.)

Q. Ledger sheet? A. Yes.

The COURT.—The same ledger sheet?

A. Yes.

Mr. CASTLE.—Was this ledger sheet kept by you? A. It was.

Q. Now, will you give those dates and amounts?

A. Give the dates of all these accounts?

Q. Yes, up to—right up to date?

A. November 9th, collections, \$500; November 10th, \$230; 11th, \$142; 12th, \$150; 13th, \$175; 14th, \$140; 16th, \$200; 17th, \$75; 18th, \$100; 19th, \$95; 20th, \$80; 21st, \$95; 23d, \$18. Just for convenience, you might add, that makes just an even thousand. At that point, I have brought down a balance. On December 4th, \$330; December 7th, \$80; December 8th, \$60; that makes a total of \$2,470. And on December 10th, \$75.

Mr. PETERS.—What was that?

A. On December 10th, \$75; on December 11th, \$50; on December 14th, \$90; December 15th, \$240; December 19th, \$90; grand total of \$3,015.

Mr. CASTLE.—They have included— Are there any other amounts which were collected by the skating rink? That is, then, up to date the total amounts? A. Yes.

The COURT.—Nothing further?

A. Yes.

Mr. CASTLE.—Q. Mr. Coombs, did you personally make any arrangements with Wong Wong as to the application of this money? A. I did not.

Q. And did you know of an arrangement for

(Testimony of Walter R. Coombs.)

the application of this money? [336]

A. Yes.

Q. And what was that arrangement?

Mr. PETERS.—I object to it, if the Court please, as incompetent, irrelevant and immaterial, calling for hearsay.

The COURT.—I think that objection is well taken, Mr. Castle, What do you think,—anything to the contrary.

Mr. CASTLE.—I will reframe that question, your Honor. Did you know of any arrangements for the application of this money from Wong Wong?

Mr. PETERS.—I object to the question as incompetent, irrelevant and immaterial, calling for hearsay.

The COURT.—I think so. He has testified that he had nothing to do with any such arrangement.

Mr. CASTLE.—I do not think he testified that he had nothing to do—

The COURT.—Well, did you hear it made by anybody else? A. I knew it was made after—

The COURT.—Well, that is to say, you heard from somebody? A. Yes.

The COURT.—He says he heard from someone that it was made.

Mr. CASTLE.—I am referring to my own question and answer.

The COURT.—Well, I think, Mr. Castle, in order to keep this record clear now that that ought to go out, whereby he has said that he knew it was made.

(Testimony of Walter R. Coombs.)

He immediately explained that it is hearsay.

Mr. CASTLE.—Oh, no, I would like to have the question back in the record looked up on that.

The COURT.—Well, go ahead.

(Argument.)

Mr. CASTLE.—We will not ask Mr. Coombs any more questions at this time, reserving, however, the right to recall him on the [337] matter of the introduction of this contract, if we cannot—if, after seeing Mr. Gill, we find out that he has not the contract. Mr. Gill is the architect in this case. Reserving the right to recall Mr. Coombs on the point of the contract, why, we are through with questions.

The COURT.—I think there should be no objection to that.

Cross-examination.

(By Mr. PETERS.)

Q. Mr. Coombs, when did Mr. Swain leave the employ of Castle & Cooke?

Mr. CASTLE.—You mean Lewers & Cooke.

Mr. PETERS.—Lewers & Cooke, yes.

A. By George! I don't know [laughs] whether—if I am not mistaken, Mr. Peters, it was during the dates of these things, September and October, Mr. Swain was then not out of the employ of Lewers & Cooke, but he was at the Coast on an extended vacation. I am quite sure of that; I wouldn't want to swear to that, but that is my recollection of it.

Q. Were any of these accounts kept by Mr. Swain? A. Those—what do you mean?

(Testimony of Walter R. Coombs.)

Q. These ledger sheets that you have referred to?

A. Let me refer to the sheets. No, Mr. Swain has not kept any of them, none of them.

Q. And you have taken these ledger sheets out of the ledger of Lewers & Cooke, Limited?

A. Yes, sir.

Q. And is there any account between Lewers & Cooke, Limited, and Wong Wong, prior to the 28th of February, 1914, as indicated by one of these ledger sheets?

Mr. CASTLE.—I will submit that is immaterial, your Honor. [338] What was that question?

Mr. PETERS.—Any other accounts existing between Lewers & Cooke and Wong Wong prior to February 28th, 1914. That is the opening date of this ledger sheet, if the Court please.

The COURT.—That brings down a balance?

Mr. PETERS.—That brings down a balance. I would like to have all the balance sheets before the Court. (Argument.) What I want to find out, if the Court please, is whether or not, according to this ledger sheet, at the end of October there was, as a matter of fact, a balance due from Wong Wong of \$9,646.35, or whether, as a matter of fact, by the end of October, if the Court please, Mr. Wong Wong was square, or, in other words, if the Court please, there had been a payment by Wong Wong on account of the advances made to him in October so that in December there was no debit, as far as Wong Wong was concerned. Cannot I go into that?

(Argument.)

(Testimony of Walter R. Coombs.)

Mr. WITHINGTON.—We object to the question on the ground it is immaterial, and on the ground it is not proper cross-examination because we have not gone into the question of any balance at all, merely confining ourselves to the moneys paid out and the moneys received under this contract, and we have not offered the ledger sheet in evidence.

(Argument.)

Mr. WITHINGTON.—Our objection is that it is perfectly immaterial, and further there has been no evidence of anything of the kind.

The COURT.—Well, he is about to bring that out now.

(Argument.)

Mr. WITHINGTON.—Take our exception.
[339]

Mr. CASTLE.—We would like to stipulate that the objection goes to this whole line.

The COURT.—Very well.

Mr. PETERS.—Q. Are there previous accounts existing between Lewers & Cooke, Limited, and Wong Wong? A. There were.

Q. And on this ledger sheet of Lewers & Cooke, Limited, Wong Wong, I find a balance brought forward as of the 28th of February, 1914, on the debit side of the ledger sheet. That was brought from what other sheet?

A. The former ledger sheet.

Q. The former ledger sheet, and you have those, have you? A. Yes.

Q. Will you produce them, please?

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—I object to that. Additional objection to that, your Honor, that it has no bearing on this case whatsoever. This is immaterial and is not proper cross-examination.

(Argument.)

The COURT.—Well, it is certainly material as to whether Wong Wong, at the date of this—bringing of this suit, was indebted to Lewers & Cooke, and if the ledger account bears upon that, then it is material evidence, but it seems to me that something might be assumed at—as a starting point somewhere, as, for instance, the correctness of any given balance. My disposition, individually would be to assume the correctness of that balance and if I was not quite satisfied I might ask the bookkeeper.

Q. What do you know about the practice of that—correctness of that balance as stated there, Mr. Coombs? Are you the bookkeeper?

A. I am. Yes, it is. [340]

Q. Is it a correct balance there?

A. Correct balance. Our books are always balanced.

Mr. PETERS.—It must be correct, Mr. Coombs, because you say so. A. It had to be correct.

Q. Mr. Coombs, these ledger sheets that you have offered here, I would ask you to please explain what is the debit side of this ledger sheet, Lewers & Cooke, Limited, Wong Wong. What is the debit side? A. This is, the left-hand side.

Q. Left-hand side, and the right-hand side is the credit side? A. Yes.

(Testimony of Walter R. Coombs.)

Q. And that applies.

Mr. CASTLE.—Object to the question—

Mr. PETERS.—And that applies to both—

Mr. CASTLE.—Our objection goes to this line?

The COURT.—Yes.

Mr. PETERS.—But to go to this ledger sheet, to get an understanding of it, say take the item to the right-hand side, J. T. Leach. \$782.96, that was a Leach contract. You refer to it just simply as a Leach building contract or moneys that you got from J. T. Leach on account of work that Wong Wong had done for Leach?

A. It may be.

Q. Well, will you please tell me what it was? Explain these entries on the other side for which you have given Wong Wong credit?

A. All of these items?

Q. Just give it to us generally, so that we can understand the system.

A. Well, first item referred to, the J. T. Leach, is a general transfer crediting Wong Wong with \$782, and charging James T. Leach. [341]

Q. Was that for work that Wong Wong had done for Leach? A. Referring to—

Q. Well, then, get down to a little later; we will take in August—take Grossman, we find under August 20th, 1914, Grossman, \$96; was that work that Wong Wong had done for Grossman?

A. On this item?

Q. Yes. A. Interest and discount.

Q. What does that mean, Mr. Coombs?

(Testimony of Walter R. Coombs.)

A. Undoubtedly interest allowed on bill of materials.

Q. Interest allowed whom on the bill of materials?

A. Wong Wong. This is Wong Wong's ledger sheet.

Q. This is Wong Wong's ledger sheet. It was interest that was allowed Wong Wong. Was Wong Wong doing work for Grossman?

A. According to this ledger sheet, he was.

Mr. CASTLE.—I think this has rather got nothing to do—gotten out of this line.

The COURT.—I think it is competent, because it is simply an illustration of other entries from which he has read here.

Mr. PETERS.—What was the amount of— What was the amount, Mr. Coombs, of interest and discount which Lewers & Cooke gave contractors on material furnished owners in September, October and November of the year 1914?

Mr. CASTLE.—I submit that is immaterial. I object to it along those lines, absolutely immaterial.

Mr. PETERS.—Question of value.

The COURT.—I think so. It may have entered into the ultimate price.

Mr. CASTLE.—We object as not proper—immaterial and not proper cross-examination.

The COURT.—I allow it.

Mr. PETERS.—What was the amount of interest and discount that [342] you allowed con-

(Testimony of Walter R. Coombs.)

tractors at those months I have named?

A. I couldn't tell without referring to my ledger sheets and books. I could refresh my memory first from the ledger sheet and then refresh my memory from other things, and make a statement.

Q. What discount would come off of this bill that is contained in Plaintiff's Exhibit "A" under the ordinary business procedure that Lewers & Cooke followed during the times covered by these bills?

Mr. CASTLE.—I submit that is immaterial, and not proper cross.

The COURT.—I think that is very material.

Mr. CASTLE.—In substance.

Mr. PETERS.—What is the answer?

A. The answer is—would be whether the account had been paid in cash. We give discount for cash payments.

Q. You do not give any other discounts?

A. I wouldn't want to say that we have, always, but it is generally on a cash payment.

Q. Well, state whether or not you gave any discount at that time to contractors, or to anybody?

A. To any contractors? Yes, we have.

Q. What discount were you giving to Wong Wong at that time on material ordered by him?

A. On certain contracts we were giving Wong Wong—I wouldn't want to say but we were giving different per cents on amounts, according to the cash payment received on orders.

Q. Give us them all, then, please, Mr. Coombs?

(Testimony of Walter R. Coombs.)

A. I couldn't do that without refreshing my memory from the ledger sheets.

Q. You couldn't?

A. I couldn't offhand, not without refreshing my memory to [343] find as to what discounts were—

Q. You don't know what discounts were allowed in 1914?

A. Yes, I know there were several discounts.

Q. Please give us that?

Q. One per cent, two and a half, five, seven and a half, ten and twenty.

Q. And give the—give us, please, the circumstances of each of those discounts?

The COURT.—What circumstances would earn a twenty per cent discount—what material?

Mr. CASTLE.—Our objection goes to this whole line.

The COURT.—I so understand.

A. Well, isn't that a matter of business that wouldn't come before your Honor?

The COURT.—Well, of course we do not see—really the Court is very solicitous to prevent the unnecessary exposure of the business affairs of any concern that has occasion to come into Court, but, if there are affairs which may have a bearing upon the judgment, why then they should be told.

Mr. PETERS.—I think you can facilitate matters, if you please, Mr. Coombs, by being more frank with us, and we will eliminate these other twenty per

(Testimony of Walter R. Coombs.)

cent, and just give us the discounts that Wong Wong was receiving, if he did receive.

A. On the cash discount he would have received—have received five per cent at that time.

The COURT.—Five per cent on the amount of the cash paid in.

Mr. WITHINGTON.—That was not what he—I object to the question.

A. On certain items, five per cent.

Mr. PETERS.—On certain items?

A. Yes, that would be lumber. [344]

Q. Lumber would be five per cent; he would get a five per cent on that, and what extra would he get for cash if any?

A. That would—I was speaking of the cash discount.

Q. Oh, five per cent, that was the cash discount that he got? A. Cash discounts.

Q. When cash was paid? A. Yes, sir.

Q. What discount were you paying on lumber at that time to contractors?

A. Five per cent.

Q. Mr. Coombs?

A. We were not paying; we were giving contracts. Five per cent on cash payments.

Q. Five per cent on cash payments. I am eliminating cash payments. Irrespective of cash I want to know what per cent there was off, if any, to contractors, on the prices that you have charged here; what discount was there to contractors, irrespective

(Testimony of Walter R. Coombs.)

of cash, on these prices that you have indicated on the Exhibit "A" attached to the—

A. That would depend entirely on the personnel of the men. If we had to we carry an account on which there are no discounts.

Q. What discount was Wong Wong entitled to under all the circumstances of his account?

Mr. CASTLE.—We object to that.

Mr. PETERS.—We are entitled to know it. What the question is now, what discounts, irrespective of cash, were you allowing Wong Wong on the character of materials set out in Exhibit "A," off of these prices that you have indicated in Exhibit "A"?

Mr. WITHINGTON.—We object to that. That is very indefinite. The question that Mr. Peters asked before I thought was admissible. He said, "Under the circumstances of this case."

(Argument.) [345]

The COURT.—I will make it a little more definite: If the payments on this account had been made as provided on the contract, upon the basis of which you furnished the materials, what would have been the rate of discount to which Wong Wong would have been entitled under your system of dealing with him?

A. Well, briefly, 5% on the lumber, which is the major portion of the bill.

Mr. PETERS.—That is in addition to the 5% on cash, isn't it? A. No, sir.

Q. Do I understand, then, that contractors, all con-

(Testimony of Walter R. Coombs.)

tractors, purchasing from Lewers & Cooke during these times, paid these prices with no discount, irrespective of the time of payment of the bill?

Mr. WITHINGTON.—I object to that on the ground this misstates the evidence, and also that the question is immaterial, but the main grounds are the misstatements of the evidence.

The COURT.—Objection sustained.

Mr. PETERS.—We take an exception and offer to prove that one of the discounts allowed by Lewers & Cooke at this time—at the different times referred to in the exhibits—one of the discounts in addition to any question of cash discounts, was an inside discount which contractors enjoyed and which was not enjoyed in common by ordinary outsiders purchasing material from Lewers & Cooke.

(Argument.)

Mr. PETERS.—What I want to know is, what inside discount, if any, contractors had in September and October and November, 1914, in addition to the ordinary cash discounts? A. On what items?

Q. On lumber. [346]

Mr. CASTLE.—We object to that. We will object to that as immaterial, not proper cross-examination, and that, if directed to the question of value, that the statute prescribes the tests of value, that is, shall be liened for the price agreed to be paid for such labor or material.

(Argument.)

The COURT.—I think you are at liberty to proceed and ask if there was any other discount in

(Testimony of Walter R. Coombs.)

addition to that five per cent that the witness has referred to, to which Wong Wong would have been entitled under the general course of dealing between that firm and contractors.

Mr. CASTLE.—Exception.

A. The cash discount for lumber—I am answering your question—is made by the cashier or men in the office, any lumber supplied to the contractor. With any inside discount I would not be necessarily conversant; you would have to ask me some specific lumber. We have what we call Number 2 lumber that a contractor might have gotten a certain percentage on.

Mr. PETERS.—All right, I will just sit here. Now, please explain your entire discount proceedings, then. Kindly explain your entire—I am going to stay with this until I get this inside discount.

Mr. WITHINGTON.—We want it understood distinctly that our objection, based on the language of the statute, which, with all due respect to Mr. Peter's statements, I would like to have the authority that it has ever been modified, is the price agreed to be paid.

(Argument.)

The COURT.—I think I can settle this. You have stated that if the payments had been made as provided by the contract a [347] deduction or discount of five per cent from the price of lumber furnished would have been made. Was there at that time in vogue between your firm and other contrac-

(Testimony of Walter R. Coombs.)

tors, and particularly Wong Wong, a provision for any other further discounts than this five per cent that you refer to?

A. There was no provision, no, sir, but I do—
There was no other.

Mr. PETERS.—There was no provision. Was there a discount, however, that was allowed in the absence of provision?

The COURT.—Any custom with regard to any further discount except this one? If he had come in every day that the contract called for and planked down the money, or made the payments called for on that particular date, until finally the accounts were paid off in that way, he would have been entitled, you say, to five per cent, discount; would he, according to your custom of business, been entitled anything further? A. No, sir.

Mr. PETERS.—That is absolutely correct?

A. That is correct, generally speaking, of course you understand.

Q. Were there any exceptions to it at that time?

Mr. CASTLE.—You are referring to Wong Wong or what?

Mr. PETERS.—Were there any exceptions to that absence of discounts at that time?

A. No, not as a rule, Mr. Peters; I can answer that.

Q. Were there any exceptions, I want to know, at that time?

A. You are asking me if—

Mr. WITHINGTON.—We object to this. It is

(Testimony of Walter R. Coombs.)

specifically and clearly an attempt to go beyond the rule that is laid down and is not within the terms of the statute; has no application to Wong Wong.

[348]

The COURT.—I think the objection is well taken.

Mr. PETERS.—We take an exception.

Q. Well then, I understand, this ledger sheet, Mr. Coombs, of Lewers & Cooke, Limited, Wong Wong again, that on the left-hand side are the amounts of cash and merchandise respectively advanced and delivered on the respective jobs which Wong Wong was handling, and on the other side was the cash moneys and interest and discounts received on the respective jobs that Wong Wong were handling; that is correct, is it?

Mr. CASTLE.—That is back on the original line; therefore the objection applies to this.

A. No one could answer that question, Mr. Peters. These debit sides are all debits against Wong Wong; these are all credits against Wong Wong.

Mr. PETERS.—Well, what is the—What does cash and McGrew mean?

A. I would have to look the original entry up.

Q. You don't understand anything from that?

A. Yes.

Q. Well, give me your understanding from this ledger sheet?

A. Simply as I gave it to you from this—

Q. Just stick to this McGrew: June 5, McGrew, 218 being under dollars. Explain what you understand by that entry?

(Testimony of Walter R. Coombs.)

A. That is a credit of June 5th, 1914, cash credit to Wong Wong, undoubtedly on the McGrew job, three hundred dollars.

Q. Paid Lewers & Cooke by whom?

A. I would have to refresh my memory from original entry on that petty cash.

Q. I see. And will you please explain the entry September 14th, Grossman, Cash Grossman, \$279, \$770.38? A. The same answer, Mr. Peters. [349]

Q. The same answer. Well, then, as I understand, then—as I understand the sheets, then, on the left-hand side indicates the cash and the money respectively advanced and furnished on the separate jobs, indicated by the names, while the right-hand side indicates the cash received on those respective jobs and credited to Wong Wong; that is correct, is it?

A. Not in its entirety.

Q. Well, wherein is my statement incorrect?

A. The second column here (reading): “Kimball, Boys School and Correa and Kalepuna and Grossman” are simply memorandums of my own for own convenience during that time in posting.

Q. For your own convenience, to indicate what?

A. To refresh my memory as I am going through the ledgers.

Q. Refresh your memory in respect to what?

The COURT.—If you will excuse me, Mr. Coombs, do they indicate to your mind as you read them there, that those particular,—those respective sums were received from those respective sources?

A. They do; yes.

(Testimony of Walter R. Coombs.)

Q. And applied to the credit of Wong Wong?

A. Or to the debit side, as the case may be.

Q. Yes. Now, state whether or not—state what is your system in respect further to these particular jobs, whether or not you kept a separate ledger sheet covering the job?

A. I have done that especially, for certain reasons, I have kept—

Q. What's that?

A. I have kept separate ledger sheets, for specific reasons, on specific jobs.

The COURT.—Have you kept one on this job?

A. I have.

Mr. PETERS.—Yes; and have you kept them on all the jobs [350] indicated on the Wong Wong ledger sheet; have you kept separate job ledger sheets for each one of the persons named in the Wong Wong ledger sheet? A. No.

Mr. PETERS.—I would ask, if the Court please, that the Lewers & Cooke—Wong Wong ledger sheet be marked for identification “Defendant’s Exhibit 1 for Identification.”

Mr. WITHINGTON.—We would like to supply in place of it a typewritten or a written copy of it, that’s all; we have no objection. We will undertake to have a copy made.

Mr. PETERS.—That is all right; we have no objection to that.

Q. Is this ledger sheet, Lewers & Cooke, Ltd., Honolulu Skating Rink, Ltd. in your handwriting?

A. Yes, sir.

(Testimony of Walter R. Coombs.)

Q. Did you open account with the Honolulu Skating Rink? A. Well, I—

Mr. PETERS.—The ledger account with the Honolulu Skating Rink?

Mr. WITHINGTON.—You are asking if he did open that with the Honolulu Skating Rink?

Mr. PETERS.—Well, that is what it is, isn't it?

Mr. WITHINGTON.—He has not stated that these are merely memorandas kept in that way.

(Argument.)

Mr. PETERS.—Isn't that taken out of your ledger, Mr. Coombs? A. Yes.

Q. Part of the books of Lewers & Cooke, Limited?

A. Yes.

The COURT.—Q. Well, you have a ledger account with the Skating Rink Company respecting the material mentioned in this lease?

A. In a way, yes, I simply credit the ledger sheet Honolulu [351] Skating Rink, Limited, for my own personal convenience.

Q. And that includes these particular materials?

A. These payments paid us by the Honolulu Skating Rink.

Q. Oh, just the credits? A. Just the credits.

Mr. PETERS.—There is a debit here of two thousand dollars, isn't there? A. I do not see it.

Q. What is that? A. No.

Q. Debit column balance, two thousand dollars, in red ink, what does that mean?

A. That is the total of this brought forward.

Q. That is the total of this, brought forward?

(Testimony of Walter R. Coombs.)

A. That is the total on the right-hand side.

Q. When did you open this account, Mr. Coombs?

A. On November 9th, 1914.

Q. On November 9th, 1914.

The COURT.—That is the date of the first payment, is it? A. Yes, sir.

Mr. PETERS.—Q. And will you please explain the entry, “1915, January 4, cash, attorney re-lien, \$350, \$102?”

A. That is simply a memorandum of mine of a charge made through our books, placing in this memo for my convenience.

Q. What do you mean for your convenience in regard to the ledger sheets in the books regularly kept by Lewers & Cooke. Will you please—

A. Yes, it is within my power as bookkeeper and cashier there, to open up a ledger sheet as I see fit, and in this particular instance and account with Wong Wong, I saw fit to keep a separate [352] account with him and head it, “Honolulu Skating Rink, Limited” to keep track of it.

Q. To keep track of it; to keep track of it for Lewers & Cooke, Ltd.?

A. On account of there being so many separate payments.

Q. Yes, for the benefit of Lewers & Cooke, Ltd.?

A. Sure.

Q. And kept it in the same book that is contained, or that contained Defendant’s Exhibit 1 for Identification, the other ledger sheet? A. No.

Q. Where did you keep it?

(Testimony of Walter R. Coombs.)

A. Kept it in another ledger book.

Q. What is the other ledger book; describe it.

A. It includes accounts alphabetically arranged from "U" to "W."

Q. It is a part of the ledger system of the company? A. It is.

Q. And the cash attorney's fee, \$102, that was paid to whom, please?

A. "Cash re-lien" I would have to go—refer to the original entry and see that.

Q. Will you produce those original entries, please?

Mr. WITHINGTON.—We will admit, if it is material, that Castle & Withington got the most of it and the rest of it went to some costs, I suppose.

Mr. PETERS.—Well, your statement is enough. I will admit that you got the \$102.

Q. Mr. Coombs, will you please tell me when the entry was made, "1914, December 31, Wong Wong, \$3,015?" [353]

A. That is the total amount of cash credits to the credit of Wong Wong that is transferred in this book, represents ledger sheet—

Q. You don't answer my question. I am asking you when that entry was made, December 31st?

A. You say when was the—

Q. I am asking you when was the entry made which is indicated by 1914—

A. That is the date.

Q. December 31st, Wong Wong?

A. December 31st, 1914.

(Testimony of Walter R. Coombs.)

Q. Well, how is it that it is entered following January the 4th 1915?

A. Why, in closing the books, as of—I have not made my journal entry up until after the 4th January; sometimes I am in court and other things, and do not get back to do my cash entries and other things. This December 31st, it really appears before, but not on the ledger sheet. That is often the case, you know, in bookkeeping, four days previous—

Q. Now, explain the charge “1915, March 31st, merchandise \$12.40.”

A. That is merchandise account. I would have to look it up on my original merchandise book.

Q. July 12th, cash, journal entry, \$32.50?

A. I would have to look that up also in my original entry.

Q. And will you please indicate now, Mr.—

Mr. PETERS.—I will offer this as Defendant’s Exhibit 2 for Identification, your Honor,

The COURT.—Well, I understood that, as a substitute for that, they will furnish copies.

Mr. PETERS.—Will you please show me, Mr. Coombs, in the ledger sheet Lewers & Cooke, Ltd. Wong Wong, the credits that you received [354] and which are set forth in the ledger sheets Lewers & Cooke, Ltd., Honolulu Skating Rink, Ltd.?

A. The journal transfers that you called my attention to, December 31st, that debit it shown by this credit.

Q. Shown by this credit, indicating December 31st, Honolulu Skating Rink?

(Testimony of Walter R. Coombs.)

A. On that page of my book. I made this entry.

Q. 505— That is, 505 referring to the journal?

A. Yes, page.

Q. \$3,015? A. Yes.

Q. And as I understand it, Mr. Coombs, this ledger sheet, Lewers & Cooke, Ltd.—Wong Wong, is a correct statement of the account of Lewers & Cooke, Ltd., with Wong Wong for the period indicated by the sheet? A. Not necessarily, Mr. Peters.

Q. Oh, you think there may be some errors or inaccuracies in that sheet? A. No, sir.

Q. Well, then, answer my question whether or not it is a true and correct statement of it?

A. It may not be; it may not be a true and correct statement.

Q. Explain you answer?

A. Or there might be a separate ledger sheet that should be charged to this or another separate ledger sheet that should be credited to it.

Q. What other ledger sheet do you refer to? What other ledger sheets are there that might affect this particular account?

A. This one is the only one that would affect this particular account, that is the Skating Rink.

Q. This is the only one that affects it?

A. That affects the skating rink account. [355]

Q. I want to know, affects the entire account?

A. I happen to know this is the only one that affects this.

Q. This is the only one; so that this Wong Wong is a—this Wong Wong, Lewers & Cooke, Ltd., ledger

(Testimony of Walter R. Coombs.)

sheet is a correct statement of the account between Lewers & Cooke and Wong Wong for the period which this purports to cover, is it?

A. I can answer yes to that question; yes, sir.

Q. Yes. Now, where is the—Where are the entries on Defendant's Exhibit 1 for Identification, of the material furnished the skating rink accordingly as you have set forth in your bill of particulars?

A. It is included in the item marked "September 30th, merchandise, \$1,524.17."

Q. Is there any other item in this ledger that represents the account for labor and for material furnished as per the bill of particulars attached to the complaint?

A. Yes, the other one is in November 30th, that is included.

Q. November 30th?

A. No, September 30th, included in this item, and then the October 31st included in this item. (Showing.)

Q. \$1,842.33, eh? And who wrote this item, "October 31st, merchandise \$1,842.33"?

A. I did.

Q. And who entered the pencil mark "\$1,800.75"?

A. I did.

Q. What was the purpose of those figures?

A. Identifying the Wong Wong account for this trial.

Q. What is the reason for that disparity?

A. This is the only case on trial I had.

Q. No, but you have in your column \$1,842.33; you have in [356] pencil marks \$1,800.75?

(Testimony of Walter R. Coombs.)

A. This pencil-mark is a memorandum for my own convenience, refreshing my memory of the exact amount charged to Wong Wong on that Honolulu Skating Rink job.

Q. What other material is contained in this \$1,842.33?

A. Several other jobs, minor jobs, that I would have to look up in the journal.

Q. So I understand there are other jobs included in the ledger, \$1,842.33—there are other jobs included to the extent of the difference between \$1,875 and \$1,842.33; that is correct, is it?

A. Job or jobs.

Q. Yes, and in the item "September 30th," you also have pencil memorandum of \$1,305.86, and in the column you have \$1,524.17; will you please explain the disparity in that?

A. The same explanation as before.

Q. The same explanation as before. So that as I understand, what other job or jobs, then, the Skating Rink, Ltd.,—the disparity between those figures represents the amount charged to Wong Wong?

A. Yes.

Q. So that, as I understand, this ledger sheet, Defendant's Exhibit 1, is a complete statement of Wong Wong's account with Lewers & Cooke, covering all jobs during the times which it—

A. I could make up a statement which, Mr. Peters, shows—

Q. Answer my question.

(Testimony of Walter R. Coombs.)

A. It may not be. My recollection is this is the only outside sheet.

Q. This is merely more detailed than this?

A. That's all.

Q. So that, as I understand it, this ledger sheet, Lewers & Cooke, Ltd., with Wong Wong, Defendant's Exhibit 1, for identification [357] represents the entire transactions between Lewers & Cooke, Ltd., and Wong Wong during this entire period—

Mr. WITHINGTON.—I object to this on the ground—

Mr. PETERS.— —covered by the ledger.

Mr. WITHINGTON.—This is covered by what the witness just said. The witness made a perfectly clear statement.

(Argument.)

Mr. PETERS.—It covers all transactions.

Mr. WITHINGTON.—You did not say “covered” all—“represents,” you said.

Mr. PETERS.—Yes, represents all the transactions between Lewers & Cooke and Wong Wong for the period indicated in the ledger sheet.

Mr. WITHINGTON.—Everybody understands it.

Mr. PETERS.—That is correct, is it?

A. That is his ledger balances, my answer; that is the ledger balances which is practically the same as—that is correct, that is Wong Wong's ledger balances brought out from time to time and these other transactions on Wong Wong's ledger sheet.

The COURT.—And of course you have all that

(Testimony of Walter R. Coombs.)

business in greater detail in other volumes?

A. Surely.

Mr. PETERS.—Q. State whether or not you made any entry, Mr. Coombs, in the Lewers & Cooke—Wong Wong ledger sheet of the cash discounts on the payments made by the Honolulu Skating Rink? A. If I made any entries?

Q. Yes.

A. I don't recall that, Mr. Peters; it would be impossible for me to tell it from that ledger sheet there. I don't think I am [358] able to.

Q. The Honolulu Skating Rink, at least Wong Wong is entitled to it?

A. I am not so sure of that.

Q. You hold out there?

A. I do not say that; I say I am not so sure of that.

Q. You are going to hold out on that in this case?

A. I don't see anything there that indicates it.

The COURT.—Q. Well, speaking about these discounts, you have mentioned lumber as being subject to discount; does that mean building material generally, such as you have furnished here, all of this bill of goods?

A. Why, your Honor, it would be impossible to go into the entire business of a firm like Lewers & Cooke, altogether, all the items. The major portion of our business in lumber, and the major portion is—I suppose 99 out of 100 items got this 5%. For instance, as an illustration, take the poultry netting, is sold by the yard; a contractor would be allowed

(Testimony of Walter R. Coombs.)

a certain per cent on that, if he buys a roll of it he would be allowed different percent, and to go into specific items which—

Mr. WITHINGTON.—The Court is directing your attention to these specific items.

The COURT.—Yes, I call your attention now to the aggregate of this bill, namely, \$3,015. Would this 5% discount to which you have referred be allowed on all of that bill if the payments had been made as anticipated, or would you segregate certain items?

A. There would be a few items that I would segregate in making the discounts, but they would be very small. The major portion of that bill would be all upon the discounts, subject to five percent. [359]

Q. Suppose you mentioned cement?

A. That would be no item—not subject to any discount whatever.

Q. What about the broken rock?

A. That would not be subject to discounts.

Mr. PETERS.—Any other items upon which you would not give a discount that were contained in that bill of particulars? A. Yes, nails by the keg.

Q. Anything else? A. Show me the items?

Q. Well, there, look at that?

The COURT.—Stating generally, now, if that money had been brought in, in those amounts and upon those dates that were contemplated in the contract, is it not a fact that you would have accepted the face of that bill, less 5%?

(Testimony of Walter R. Coombs.)

A. No, it is not altogether—

Mr. WITHINGTON.—If your Honor would allow Mr. Coombs to answer the question—

A. First item here that is—is next, would be the two kegs of 8-penny G. C. nails; the other is one 5-foot G. A. C. C. saw, and two hundred bags of cement, fifty yards of No. 3 rock, ten yards of No. 2 rock; one keg of 8-penny galvanized wire nails.

The COURT.—Well, I think it is hardly necessary for you to go and make a segregation at this time.

A. I know them all; I could tell each item that would not be subject to a five per cent cash discount.

Q. Well, then, the things that would be subject are the lumber, anyway? A. Yes.

Mr. PETERS.—Would not be, the cement and nails? A. And others. [360]

Q. What others?

A. I am reading them. 300 sheets of 6 foot 26-gauge iron would not be subject to discount, nor 70 sheets of 8-foot gauge, nor the one keg of S. H. nails, nor the 4 lts. of florentine glass, nor the one keg of 30-penny nails, nor the 50 pounds of 40-penny nails.

Mr. WITHINGTON.—None of the nails, to save time?

A. None of the nails.

Q. None of the nails.

A. Iron rods, bolts and washers would not be subject to a discount. The item of lumber that was marked damaged and on which a special price had

(Testimony of Walter R. Coombs.)

been given would not be subject to a discount; roll of poultry netting would not be subject to a discount.

Mr. WITHINGTON.—Well, how about that?

A. Would not be, not to an additional discount. There is two other rolls of poultry netting there that would not be—further discount, nor the cement nor rocks and nails. Four lts. of glass would not be subject to a discount nor the two yards of rubberoid nor the additional charge of rock. Outside of those items that I have named this entire bill would be subject to a five per cent discount, if paid.

(Witness withdrawn temporarily.)

Testimony of Thomas Gill, for Plaintiff.

THOMAS GILL, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. Mr. Gill, what is your business?

A. Architect.

Q. And was that your business during the fall of 1914? [361] A. Yes, sir.

Q. Were you the architect on a job at the Honolulu Skating Rink? A. I was.

Q. Was the job on a written contract?

A. It was.

Q. Have you the contract? A. I have.

Q. Will you produce it, please? Referring you to the paper you produced, in the left-hand corner,

(Testimony of Thomas Gill.)

is that your signature? A. It is.

Q. And do you know the other signatures appearing on that page? A. I do.

Mr. CASTLE.—We offer the contract in evidence.

The COURT.—Any objection? You do not care to have it read?

Mr. PETERS.—No objection. I understand he has identified it, your Honor.

(Paper received in evidence and marked Exhibit "C" for the plaintiff.)

Mr. CASTLE.—Mr. Gill, do you recollect when—Mr. Gill, referring you to another paper—

Mr. PETERS.—Pencil figures go out. They are not a part of this?

Mr. WITHINGTON.—Unless it appears on the examination that they are, I do not care—

Mr. CASTLE.—Q. Mr. Gill, is that your signature? A. It is.

Q. And do you know whose signature that is—referring— A. Yes.

Q. And whose signature is that?

A. That is Wong Wong's.

Q. Do you know his signature? A. Very well.

Q. Mr. Gill, what are the pencil figures placed on that paper, if you know? [362]

A. I do not know. They are not mine.

Q. They are not yours.

Mr. CASTLE.—We offer the paper in evidence.

The COURT.—Less the pencil figures.

Mr. CASTLE.—Less the pencil figures at the present time.

(Testimony of Thomas Gill.)

The COURT.—Any objection?

Mr. PETERS.—No objection.

The COURT.—It will be admitted as Exhibit “D” for the plaintiff.

Mr. CASTLE.—Is Exhibit “D” the certificate of final completion?

Mr. PETERS.—I object to that as immaterial. I object to that as—the certificate speaks for itself.

The COURT.—I think so.

Mr. PETERS.—Incompetent, irrelevant and immaterial.

Mr. CASTLE.—All right. That’s all.

Cross-examination.

(By Mr. PETERS.)

Q. Mr. Gill, where are the plans and specifications referred to in that contract?

A. I have the originals.

Q. Will you produce them, please?

A. They are outside there.

Q. These are the plans and specifications and all of them, Mr. Gill?

A. There might be a few little details, as the work went along.

Mr. PETERS.—We cannot offer this in evidence, but it seems to me that we should have those in because they are a part of your contract. You are not entitled to have your contracts go in without the other papers that are made a part of your contract.

Mr. WITHINGTON.—We think they are clearly immaterial in this case. [363]

Mr. PETERS.—That is all right; we ask that

(Testimony of Walter R. Coombs.)

they be marked, if the Court please, for identification.

Mr. WITHINGTON.—We do not object to them going in in this case. We won't object to their going in whoever offers them.

The COURT.—Very well, they are—by consent of parties they are admitted as Exhibit “E” for the plaintiff.

Mr. PETERS.—E 1 prime, E 2 primes.

The COURT.—The pictures, as some people call them, are admitted as one exhibit, E prime 1 and the specifications as E prime 2.

Mr. PETERS.—No further questions.

(Hereupon the further hearing in this matter is continued until Monday morning.) [364]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

LAW 8142.

LEWERS & COOKE, LTD.,

vs.

WONG WONG.

February 5, 1917.

**Testimony of Walter R. Coombs, for Plaintiff
(Recalled—Cross-examination).**

Cross-examination of W. R. COOMBS (Recalled).
(By Mr. PETERS.)

Q. Mr. Coombs, you said that at the time of the execution of this contract between the Skating Rink and Wong Wong that Lewers & Cooke gave a bond. Where is that bond, Mr. Coombs?

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—I submit that is immaterial and not proper cross-examination.

The COURT.—I think it is fair cross-examination. It came out on the direct.

(Argument.)

I will allow the question.

Mr. CASTLE.—Note an exception.

A. I couldn't really give that answer, because, refreshing my memory, there was no bond on this contract.

Mr. PETERS.—Since you have refreshed your memory?

A. Well, if I made a statement before—I don't remember saying it. I think, if I am not mistaken, Mr. Peters, your question before on the direct or on your cross-examination—I was simply explaining how we make these contracts. A good many of them are under bond. This one in particular was not. [365]

Q. Why, Mr. Coombs, you testified on direct examination that you went with Mr. Ikeda to Mr. Lymer's office and Lymer drew a contract and Lewers and Cooke executed a bond, after it was signed, "Saw contract in my possession; I think now is in Tom Gill's possession." That is the opening of your direct examination, when you first took the stand.

A. I was referring only to the contract there.

Q. What did you mean by saying that Lewers & Cooke went on the bond?

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—I submit it is asked and answered.

A. Well, I was in error if I said it was on the bond.

Mr. PETERS.—Do you know whether or not there was a bond executed in this case?

A. I know that there was not.

Q. You know that there was not? A. Yes.

Q. Are you positive of that? A. Yes.

Q. And you are just as positive of that as you are of any of the other evidence that you have given here,—there was no bond executed? That is correct, is it? A. Yes, sir.

Q. Now, you say that just as soon as the contract was executed you began to deliver material; that is correct, isn't it? A. I think it is; yes, sir.

Q. And just as soon as you began to deliver material you made a demand on Wong Wong for payment; is that correct?

Mr. CASTLE.—That is not the case.

Mr. WITHINGTON.—No such testimony; I don't remember that testimony.

Mr. PETERS.—I am asking in this if that is correct.

Mr. WITHINGTON.—It is assuming something not in evidence. [366]

The COURT.—Objection sustained.

Mr. PETERS.—Q. Now, when was the first time that you made a demand for payment?

A. Just prior to the filing of this lien.

Q. That was the first demand you made?

(Testimony of Walter R. Coombs.)

A. First demand,—really the first demand, I would say, would be when the order was presented.

Q. You understood the question, did you not, Mr. Coombs, when you made your first demand?

A. You understood my answer. I gave it direct.

Q. You made the first demand, when was it,—just before the filing of the lien?

Mr. WITHINGTON.—I submit that when a witness is trying to answer a question and has answered it and then come a fact which might be construed as being a demand, so as to make a full answer—

The COURT.—Give the witness a chance, Mr. Peters, whether a demand was made and when.

Mr. PETERS.—As I understand it, it was just before the filing of the lien that the first demand was made.

A. I know that that demand was made, whether that was the first demand I wouldn't swear to it.

Q. You wouldn't say, and of whom did you make this demand? A. From Wong Wong.

Q. Was it in writing or was it oral? A. Oral.

Q. Oral? A. Yes.

Q. And whereabouts was it made?

A. In Lewers & Cooke's office.

Q. And what did you say?

A. I don't quite understand that, Mr. Peters.
[367]

Q. You said that the demand was oral; I am asking you now what was said?

A. I just demanded payment under the contract, demanded payment from Wong Wong.

(Testimony of Walter R. Coombs.)

Q. What did you say, that is what I want to know? A. I don't remember—

Q. Your words, to Wong Wong?

A. —the phraseology, or how I demanded it.

Q. I am not talking about phraseology; I am talking about words.

Mr. WITHINGTON.—I would like to suggest that the witness is certainly misled by that last statement.

A. Is quite beyond me.

Mr. PETERS.—I am asking the words that were used.

A. I couldn't tell you what words I used. I made demand—I am making demands all the time, so I couldn't tell you what words I used. I demanded for the money.

Q. Did you mention any amount?

A. Demanded the amount that was due.

Q. I am asking you did you mention any amount?

Mr. CASTLE.—I submit that was asked and answered.

Mr. PETERS.—What was the amount due then?

A. I don't remember just now.

Q. And when was the lien filed?

A. I don't remember that date.

The COURT.—It speaks for itself.

Mr. PETERS.—Were you present at the filing of this lien?

Mr. CASTLE.—I submit it is immaterial, not proper cross-examination.

The COURT.—I allow the question, that is to

(Testimony of Walter R. Coombs.)

say whether you were in the clerk's office when the paper was passed in there?

A. I was not. [368]

Mr. PETERS.—Did you have anything to do with the filing of the lien?

A. Yes, I think so; the chances are very favorable that I drew up the bill.

Q. I am not asking about the chances; I want to know what you yourself personally had to do with it.

Mr. CASTLE.—I submit that is—his answer is—
The COURT.—If you remember.

A. As I remember it, I drew up the papers for the lien,—that is, not the legal papers, but the bill for material, etc.

Mr. PETERS.—Q. How did you draw it up?

A. With the aid of a stenographer.

Q. Gave it to a stenographer?

A. With the aid of the stenographer; that is the way I do draw these—

Q. Dictated it?

A. Probably assisted in the dictation.

Q. How's that?

A. Probably assisted in the dictation.

A. I am not asking about probabilities or possibilities. I am asking you, what you did?

A. Nobody could answer that question.

Q. You can't answer that? A. Nobody could.

Q. Did you ever see the lien papers or so-called lien papers? A. Yes.

Q. When did you see them for the first time?

(Testimony of Walter R. Coombs.)

A. In one of two places,—either in Lewers & Cookes' or Castle & Withingtons'—

Q. When? A. Before they were filed.

Q. How long before they were filed. [369]

A. I would have to guess at that and say a few days.

Q. And you have no definite idea as to the date of their filing?

A. It is two years ago and it was after— It was—

Q. Well, just answer my question, yes or no, will you please?

A. Yes, or no, I couldn't tell that. The latter part of 1914.

Q. Did you make any other or further demand?

A. Yes. Yes, I did.

Q. Upon whom? A. Upon Wong Wong.

Q. And when?

A. After the lien was filed.

Q. And when, in respect to the time of bringing suit?

A. Could you tell me when the suit was brought?

Q. I will ask you, do you know when that suit was brought?

A. I don't remember the exact date.

Q. Do you remember the incident of its being brought? A. Yes.

Q. Well, was it before or after that suit was brought that you made this latter demand?

A. Both.

Q. Both? A. Yes, sir.

(Testimony of Walter R. Coombs.)

Q. Where did you see— Where did you make this demand of Wong Wong after the lien was filed and before the suit was brought?

A. Generally in Lewers & Cooke's office. There were several demands made.

Q. I am not asking you about generally. I am asking you about this specific demand which you say you made between the time of the filing of the lien and the bringing of the suit.

A. Either in our office or at Wong Wong's office.

Q. Could it be anywheres else?

A. It could be, but it is not. [370]

Q. It was not? A. No.

Q. It was positively in either your office, that is, Lewers & Cooke's office or Wong Wong's office?

A. Yes.

Q. And was it oral or in writing?

A. Oral.

Q. Was it the same or a different demand that you had made—than you had made previously and concerning which you had testified this morning?

A. It was a demand for all payments, too.

Q. Was it the same or a different demand, Mr. Coombs, from the one you have already testified as having been made prior to the filing of the lien.

The COURT.—That is, is this particular demand that you are speaking about now, the same demand that you had spoken about before as having been made prior to the lien?

Mr. WITHINGTON.—I don't understand that, whether he means it was the same demand or a de-

(Testimony of Walter R. Coombs.)

mand for the same amount or the same character of demand.

The COURT.—Q. Do you understand the question? A. Not exactly, your Honor.

Mr. PETERS.—Q. When you say that another demand having been made between the time of the filing of the lien and the time of the filing of the suit, isn't that the same demand that you are talking about as having been made previously and before the filing of the lien?

A. Isn't it the same demand?

Q. Yes, isn't it the same demand now that you are talking about? A. No.

Q. Was it a different character of demand, as to difference in amount? [371]

A. The same character.

Q. The same character. What was the purpose of making it?

The COURT.—Why did you make a demand to him,—for the purpose of collection or some other purpose?

A. Well, collection purpose was naturally the first part of it; probably for legal purposes, as much as any other; made a formal demand, went to that extent.

Q. And why didn't you make it in writing, so that you would have preserved evidence of it?

A. That was not necessary.

Q. You did not consider it necessary?

Mr. CASTLE.—I submit this has gone far enough.

(Testimony of Walter R. Coombs.)

The COURT.—The question is answered. Nothing before the Court.

Mr. PETERS.—Q. Was there any other or further demand made on anyone? A. Yes.

Q. Of whom? A. Wong Wong.

Q. When? A. After the suit was filed.

Q. Whereabouts was that made?

A. Either in Lewers & Cooke's office or Wong Wong's.

Q. Orally or in writing? A. Orally.

Q. Of the same character of the other previous demands? A. Yes.

Q. And what was the purpose of that demand?

Mr. CASTLE.—I submit it is immaterial.

The COURT.—He made the answer.

A. The same reason as before, all the demands were made.

Mr. PETERS.—Eh?

A. The same reason as before all demands were made.

Q. What reason was that?

Mr. CASTLE.—Asked and answered. [372]

The WITNESS.—I thought you asked me if it was the same character as the former demand. I have answered that.

Q. For what purpose it was made, you say the same purpose as all the other demands were made; I didn't know that you had assigned a purpose for all the other demands?

A. Yes, I thought I answered that, Mr. Peters.

Q. Well, then, please answer that again; my

(Testimony of Walter R. Coombs.)

recollection is faulty in that regard.

A. It was first for payment, that was one of the primary objects; another one was from a legal standpoint.

Q. What legal standpoint?

A. I wouldn't be able to answer that.

Q. Did anyone tell you to make this demand after suit was filed? A. Beg pardon?

Q. Did anyone tell you to make this demand after suit was filed?

A. After consultation with our attorneys, in regard to the matter.

Q. Who? A. Messrs. Castle & Withington.

Q. What ones in Messrs. Castle & Withington's—

A. It was in their office; I wouldn't—

Q. You can't say?

A. I don't think I could.

Q. It was either Mr. Castle or Mr. Withington, after suit was filed, advised you to make another demand; is that correct?

A. Not necessarily, it may have been both; we were in consultation with the two of them.

Q. Either one of them or both? A. Yes.

Q. Advised you to make a demand for the amount due, of Wong Wong after suit was filed; that is correct, is it? [373] A. Yes, sir.

Q. Did you make any other or further demand of anyone? A. Yes.

Q. When?

A. During the construction of the building I demanded payment on behalf of Wong Wong on ac-

(Testimony of Walter R. Coombs.)

count of the assigned order to us, of George Ikeda, the treasurer of the Skating Rink, President Ohrt of the Skating Rink—I don't remember the other personnel, but there were several others that I went to in that connection to see how the payments were made and when.

Q. Did you make any other or further demands of anyone?

A. I said yes, but I cannot remember the personnel of others.

Q. Well, others connected with the skating rink?

A. Others connected with the skating rink.

Q. Did you make any other or further demands?

A. I don't remember that I did.

Q. You have furnished, Mr. Coombs, three sheets here, Lewers & Cooke, Ltd.,—Wong Wong, being two sheets, and Lewers & Cooke, Ltd.—Honolulu Skating Rink, Ltd., another sheet, so—I understood from your explanation before you took the stand that these two sheets in relation to the Wong Wong account are on the opposite sides of the ledger sheet? A. Yes.

Q. Where are the sheets that were identified and which you withdrew?

A. I left those at the office with permission of the Court that I should leave them at the office, and these are exact copies of them.

Q. Yes, but I want those pencil memoranda that you had on [374] the other.

A. May I explain those pencil memoranda?

Q. No; I would like to have you make those on

(Testimony of Walter R. Coombs.)

these sheets, the same pencil memoranda, as I want the picture of the sheets to be absolutely the same. I wish you would do that, please. That is all.

Redirect Examination.

(By Mr. CASTLE.)

Q. Mr. Coombs, were these demands that you speak of made under the instructions of the attorneys?

Mr. PETERS.—I object to that as immaterial, and submit that that was the objection made by counsel. Further, indefinite, referring to all the demands.

The COURT.—Well, the witness has testified that some of them were, but I think it is entirely immaterial.

Mr. CASTLE.—It is sustained?

The COURT.—Yes.

Mr. CASTLE.—Take an exception.

Q. Mr. Coombs, will you state what the amount is due and owing to Lewers & Cooke, if any, on the skating rink job from Wong Wong?

Mr. PETERS.—I object to the question as calling for a conclusion of the witness, if the Court please, and on the further ground that it affirmatively appears by the balance sheet, if the Court please,—by the ledger sheet as submitted here, that there is nothing due and owing to Wong Wong—from Wong Wong and the Skating Rink to Lewers & Cooke on the skating rink job.

The COURT.—Would you just read that question again?

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—Will you state what amount is now due and owing to Lewers & Cooke from Wong Wong on the skating rink job?

Mr. PETERS.—I object to the question; I object to it as [375] incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and furthermore, that the ledger sheet affirmatively shows that all the work and labor performed, or material furnished by Lewers & Cooke, Ltd., to Wong Wong on the skating rink job has been fully paid for and discharged and satisfied.

The COURT.—I have not seen any such sheets; they are not in evidence.

Mr. PETERS.—Well, perhaps that suggestion of the Court is well taken.

The COURT.—What the Court knows is that there is a suit here pending, and that it is pending upon a certain account that is attached to the declaration, the lien, in other words—the account attached to the lien and the declaration. Now, I understand from this witness that since this suit was brought, or since the lien was filed, anyway, there have been payments made on account, so that the amount which would be now due, if any, is less than it was when the lien was filed.

Mr. CASTLE.—That is correct.

The COURT.—I think that we ought to know the amount Lewers & Cooke claim at the present time.

Mr. WITHINGTON.—That is a matter of computation from the witness' testimony.

(Argument.)

(Testimony of Walter R. Coombs.)

Mr. CASTLE.—Q. Have you figured this out, Mr. Coombs? A. Yes, I have figured it out.

Q. And what amount is that? A. \$2,041.61.

Q. And has that been paid—

The COURT.—At what date was this?

A. To date. [376]

Q. Including interest?

A. No, it does not include interest.

Mr. CASTLE.—And has that been paid, in whole or in part?

A. None of the \$2,041.61, it has not been paid, no. I observe, incidentally, at this time, that the lien appears to have been filed for \$2,586.61.

Mr. CASTLE.—Yes, and there were several minor amounts you remember were paid in after the filing, and that is the object of this to— No further questions.

Testimony of F. J. Lowrey, for Plaintiff.

F. J. LOWREY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CASTLE.)

Q. What is your name? A. F. J. Lowrey.

Q. And what is your business?

A. President of Lewers & Cooke, Ltd.

Q. And for how long have you been president of Lewers & Cooke?

A. Ever since the corporation was started in 1901.

Q. Mr. Lowrey, do you remember the skating rink job? A. I do.

(Testimony of F. J. Lowrey.)

Q. What arrangements, if any, did you have with Wong Wong as to the application of payments on that job?

Mr. PETERS.—I object to it as incompetent, irrelevant and immaterial, if the Court please, what arrangements they had. I suppose that comes in within the ruling made by your Honor, but it might affect the rights of Wong Wong and the Skating Rink, and let it in subject to the objection along this whole line of objections. [377]

The COURT.—I allow it.

Mr. PETERS.—All right, your Honor, take an exception to it.

Mr. WITHINGTON.—If your Honor intends to rule it out as to these defendants, why, we have to take an exception. I understood your Honor's ruling the other time was that the matter would not be passed upon at this time.

The COURT.—Very well, I think that was the understanding, and will continue to be the understanding.

Mr. CASTLE.—That point was to be argued at the close of the case.

The COURT.—Yes; very well.

A. That the first moneys received should be applied to the cash which we had advanced.

Mr. CASTLE.—Was any amount named?

A. We were not to advance an amount to exceed two thousand dollars.

Q. And who made this arrangement, if you know?

(Testimony of F. J. Lowrey.)

A. I made the arrangement with Wong Wong.

Q. Mr. Lowrey, you remember the price of—I will withdraw that question. Referring you to Exhibit “A,” to plaintiff’s bill of complaint in this case, and referring you to the second item on the 4th page of that exhibit 1, state whether or not the price for plain redwood set out there, sixty dollars, is correct?

Mr. PETERS.—I object to it as immaterial, if the Court, please, whether the price is correct.

Mr. CASTLE.—Whether that was the price in the market at that time?

Mr. PETERS.—I object to that, incompetent, irrelevant and immaterial, no foundation laid.

(Objection overruled. Exception by Mr. Peters.)
[378]

A. The price is correct as of that date.

The COURT.—What about the value—was the material of that value in the market at that time?

A. Yes, sir; it was.

The COURT.—Let me suggest that there should be a segregation made between lumber and rock and other materials, if it should become necessary.

The WITNESS.—Mr. Coombs, can give it to you in five minutes.

Mr. CASTLE.—Now, that you Honor has brought up the question—Mr. Lowrey, referring you to the notice of materialmen’s lien in this case, the credit set forth there is \$520, and it appears in evidence here that one, possibly two, small amounts were—one amount was paid in on December 10th and

(Testimony of F. J. Lowrey.)

another small amount on December 11th. Could you explain why that credit was not allowed.

Mr. PETERS.—I object to that question as immaterial, if the Court please.

(Objection overruled. Exception by Mr. Peters.)

Mr. CASTLE.—Will you examine this lien and see if you swore to it? A. I did.

Q. And do you know whether or not the amount set forth there, \$520, is correct?

Mr. PETERS.—I object to that as calling for a conclusion of the witness.

The COURT.—Well, he is asked if he knows.

Mr. PETERS.—Exception.

A. Evidently from—Evidently from the books it was not exactly correct.

Mr. CASTLE.—Q. Have you any explanation you wish to make?

Mr. PETERS.—I object to it as the witness indicates that he has no explanation to make, further than this, evidently, according [379] to the books, it was incorrect.

(Objection overruled. Exception.)

A. In making up an account of this kind on the typewriter it sometimes goes over a day or so from the time instructions were given to have it prepared. At the time that instructions were given for it to be prepared I have no question but what that was the exact amount on the books. Before it actually was made out and sworn to these one or two payments had come in and so that the credit does not appear on that lien as filed.

(Testimony of F. J. Lowrey.)

Mr. CASTLE.—Q. Mr. Lowrey, was it your belief at the time you swore to this lien that it was correct? A. It was.

Mr. CASTLE.—No further questions.

Mr. PETERS.—No questions. Oh, just one moment, one thing; you have asked him about the price of plain redwood. State whether or not in 1914, October, that contractors doing a large volume of business did not get a special price in addition to the cash discounts?

A. No, it was in the form of the one—of the one discount.

Q. Just the form of the one discount?

A. Yes, on the— In some cases that was made up at the time of the charge, and in others it was made at the time of settlement.

Q. You are referring now to the five per cent?

A. At whatever the discount was at that particular time. I couldn't say from memory whether it was five or ten per cent. It varies at different times, but the rate would have been the same for all of that class of trade.

Q. Well, was that rate of discount higher than the ordinary purchaser, perhaps of volume but not of the volume of a contractor [380] actually engaged in building operations, in purchasing to some large extent from you?

A. This would have been—I don't know as I quite get your question. This would be— This rate would apply to all, all contractors, all buying on practically that same basis at that time.

Mr. PETERS.—I see. That's all.

(Testimony of F. J. Lowrey.)

Redirect Examination.

(By Mr. CASTLE.)

Q. Could you explain a little more about this discount, whether this is meant for prompt payment?

A. The discount is based on prompt payment.

Mr. PETERS.—Q. Primarily, Mr. Lowrey?

A. Primarily.

Q. Primarily? A. Yes.

Q. That is, if you are never paid of course you do not give any discount? A. Try not to.

Mr. PETERS.—That's all. I would ask that the Defendant's Exhibits 1 and 2 for identification be admitted in evidence.

The COURT.—What are they?

Mr. PETERS.—They are the ledger sheets. It seems to me, if the Court please, thinking over that further, that we are entitled as a part of the cross-examination of F. J. Lowrey and Mr. Coombs to have these ledger sheets in evidence.

The COURT.—These are the copies, are they?

Mr. PETERS.—These are the copies, your Honor.

The COURT.—Have you any objection, gentlemen?

Mr. WITHINGTON.—We have no objection.

The COURT.—Exhibits 1 and 2 for identification will now be introduced or admitted as Exhibits 1 and 2 respectively, for the [381] defense,—that is, copies produced here by the plaintiff of the ledger sheets which were used in evidence and which are now accepted as copies, are they, Mr. Peters? You accept these as copies?

Mr. PETERS.—Yes, your Honor.

The COURT.—Very well. Whichever is one mark it Exhibit 1 for the defense, two the same. Proceed.

Mr. WITHINGTON.—Does your Honor want in the record the amount of these items? Mr. Coombs better take the stand and put it on the record. Your Honor has indicated he would like to have the items segregated. I supposed we better recall Mr. Coombs and either segregate—

The COURT.—Oh, I am perfectly willing to have Mr. Coombs' memorandum to be attached to one of those sheets there, if counsel are willing.

Mr. WITHINGTON.—Is that satisfactory, Mr. Peters?

Mr. PETERS.—All right.

Mr. CASTLE.—We will rest, your Honor, with the right to ask—reserving the right to ask Mr. Gill one question on one small item, if he should come in.

Mr. PETERS.—What item is that?

Mr. CASTLE.—Why, he say that he thinks—

Mr. WITHINGTON.—Wong Wong is mistaken about these benches, which were not nailed down, being put in before the completion of the contract. He said they were put in for some affair that came later. Small item, he says, not over sixteen—

Mr. PETERS.—As I understand it you rest then except for that matter of that item?

Mr. CASTLE.—Yes.

Mr. PETERS.—If the Court please, we desire at this time to move for a nonsuit on the ground that

there has been a failure [382] of proof in this case;

(a) That it does not appear that a notice of lien has been filed at the time or in the manner provided by law;

(b) That it does not appear that a copy of notice of lien was served upon the defendants Rosenblett and Harrison, or either of them;

(c) That it does not appear that a demand was made upon the owners for or refusal or neglect by them to pay the amount due or claimed to be due prior to the enforcement of the lien. Further, that the plaintiff has failed to show that anything was due from Wong Wong to Lewers & Cooke at the time of the filing of the notice of lien herein and/or the time of the bringing of the suit herein; on the contrary it affirmatively appearing that Lewers & Cooke have applied moneys received upon the alleged indebtedness for labor and material respectively performed and furnished, and, on the further ground, if the Court please, too, that it affirmatively appears that the lien is not in the form as provided by statutes in this, that it does not set forth the description of the property sufficiently to identify the same.

(Argument.)

The COURT.—Your claim is that, although there may be a balance shown, balance due from Wong Wong, yet that is not necessarily, nor is it shown in this case to be, a balance in respect of the material furnished for this purpose?

Mr. PETERS.—Exactly, your Honor. That is, absolutely, said in as few words as it possible could be said.

The COURT.—What, if anything, do you wish to do or move in regard to proof of service, Mr. Withington? [383]

Mr. WITHINGTON.—If there is any question made on the proof of service of the lien we would like to show that it was served as appeared on those dates, and I would like, in the first place, I would like to have the deposition of Mr. Rosenbledt opened for that purpose.

Mr. PETERS.—You have no right to that deposition when Mr. Rosenbledt is here.

The COURT.—I do not see how you have the right to open a deposition, for two reasons, first, Mr. Rosenbledt is here, second, he moves to—he moves for the entry of a nonsuit upon the evidence as produced by you. You have not offered his evidence.

(Argument.)

Mr. WITHINGTON.—We would like to have a—to save any question about this, because it is a matter about which there is no question, which I endeavored to call attention to when Mr. Castle was putting in the evidence and I did not hear any objection to the admission of the proof of service; if there had been at that time, we would have shown to supplement that, the testimony to show that it was actually served, and this is a surprise to us because of that fact. That fact we would like to show.

The COURT.—I do not understand that there was any—

Mr. PETERS.—No offer of proof of service.

The COURT.— —any offer of proof of service.

Mr. WITHINGTON.—I would like to call attention to the record, the fact that I called attention to the fact that we were offering the paper attached showing the proof of service.

The COURT.—Yes, it was offered, and was put in; yes, what does it prove? [384]

(Argument.)

Mr. WITHINGTON.—That is a question which we would like to ask your Honor the privilege of putting on the police officer to show that this service was actually made.

The COURT.—I think you ought to have it.

Mr. PETERS.—Well, of course, I would like to have it appear, if the Court please, that we object to the opening and allowance of plaintiff's motion to open on the ground that there is no reason shown for the opening, of the—for the opening of the case, no showing, if the Court please, of any surprise here, and it is hardly worth while, if the Court please,—for it would be no advantage to defendants to insist upon strict proof if the plaintiff can, merely upon application, open a question at any time he desires. We take a ruling of the Court.

The COURT.—Well, I feel that there has been no proof thus far but I also feel that the circumstances have been such that the counsel for plaintiff was really lulled into—

Mr. PETERS.—No, no, don't say that.

The COURT.—I am not blaming you, now, don't run away with the idea that you are being accused of anything. They were lulled into repose by perhaps relying upon the practice as it has been understood and been followed in this court for many years—The fact is, Mr. Peters, you are to be congratulated upon opening some new veins in this mine and I agree with you in general terms that you ought to have the benefit—the man who discovers an ore body ought to have the benefit of it, but here there appear to be some contrary rules which operate upon the situation and I feel that the—it is discretionary with the Court and that it would be a fair exercise of discretion [385] of the Court to permit the case to be now reopened in order that the plaintiff may prove the service.

Mr. PETERS.—I now, for the purpose of facilitating matters, admit, for the purposes of this case, that the officer, if called, will testify to the statement made in his return of proof, without being taken in anyway waiving any of the objections made to the notice of lien or without in anyway waiving or objecting to the Court opening the plaintiff's case. And now, if the Court please, we renew our motion for a nonsuit. I would like to have it appear in the record what the grounds of my nonsuit are, again inasmuch as you have now rested, as I take it—

Mr. WITHINGTON.—No, I would like to call attention to the—

The COURT.—I want to see just what the officer

has said, and what the defense admits he would state if he were here.

(Reads return.)

Very well, then, Mr. Waipa, if present, would so testify; that is the intent of the admission.

Mr. PETERS.—I take it that the plaintiff has rested, then, on that. Have you rested now upon that?

The COURT.—There is no other evidence you desire to put in.

Mr. WITHINGTON.—Why, we might put in the record of the—of this register, but I do not see how that is made necessary. We will call the clerk and put in the register if there is any question about it. Let's call the clerk.

The COURT.—I sustain the objection.

Mr. WITHINGTON.—We have no further.

Mr. PETERS.—We now renew our motion for a nonsuit upon the following grounds: [386]

1. Failure of proof by plaintiff of:

(a) A notice of lien filed at the time or in the manner provided by law;

(b) Failure of proof in showing that a copy of a notice of lien was served upon Rosenbledt or Harrison or either of them;

(c) That there is no showing that a demand was made upon the owners for or refusal or neglect by the owners to pay the amount due prior to the enforcement of the lien. There is also a failure to show, if the Court please, as against the defendants Rosenbledt and Harrison, or either of them, that

anything was due from Wong Wong to Lewers & Cooke at the time of the filing of the lien and/or the time of bringing suit herein in relation to the skating rink job, and the grounds too, that the notice or the alleged purported notice of lien does not set forth a description of the property sufficient to identify the same. I submit the same argument.

The COURT.—Now, Mr. Withington or Mr. Castle, if you care to argue those grounds you are at liberty to do so, but I would state at the outset that the ground last stated, namely the sufficiency of description for the purposes of identification, I think is not well taken; I think the description is sufficient for that purpose; I will not trouble you about that point.

(Hereupon the further hearing of this matter is continued until Wednesday morning at 8:30, and at that time is further continued until 8:30, February 8th.) [387]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

LEWERS & COOKE, LTD.

vs.

WONG WONG.

February 8, 1917.

The COURT.—Law 8142—Lewers & Cooke, Ltd., vs. Wong Wong and Others, defendants, I am ready with the decision upon the motion of the defendants Rosenbledt and Harrison for a nonsuit.

In the facts that I will announce as found there will not be every detail included but I think likely there will be a sufficient finding to cover the case and, if counsel feel otherwise as to any particular facts which they deem to be involved I would be glad to hear from them.

I find as a fact that the plaintiff furnished certain building material at the request of the defendant, Wong Wong, to be used, and which, with certain exceptions, which, in the view that I take of the case, it is not necessary to be further considered, were used in the construction of a certain building known as the Honolulu Skating Rink.

That the property on which the building was constructed was and is the property of the defendants, Rosenbledt and Harrison in fee. That the last-named defendants had made a lease of that property to the Honolulu Skating Rink, defendant, containing the provision for the erection of a building thereon by the Skating Rink, Limited, and at its own expense.

I find that the gross value of materials furnished by plaintiff for the purpose indicated was \$3121.01 but that, [388] according to the course of dealing between the plaintiff and defendant Wong Wong, the latter was entitled to a discount of 5% upon certain of those materials, that is, the price of certain of them, namely, the lumber products, as I think they may be best described, the amount being \$2036.11 and the amount of discount being \$101.80, thus reducing the amount of the bill for the materials furnished to \$3019.21.

I further find that, in pursuance of an agreement had between the plaintiff and the defendant Wong Wong, the plaintiff made advances of case to Wong Wong during the progress of the construction of the building for the purpose of paying off the labor employed upon the job, but there is no evidence as to whether that money or any of it was devoted to that purpose. The amount of such advances aggregated \$1950, and it was agreed between plaintiff and Wong Wong that the moneys received by Wong Wong from the contract which he made with the Skating Rink Company, should be applied in the first instance to the extinguishment of those cash loans, leaving the account for materials to be cared for otherwise, the intent undoubtedly being that plaintiff should thus preserve its lien or right to a lien for the price of the materials. In the view that I have taken of the general situation these facts do not become very material, but I wish to say at this time that if it be material to the case, I would hold, and do hold, that it was incompetent for the plaintiff and Wong Wong by any secret agreement between themselves to prejudicially affect the interests of the owners of the property by any arrangement for the application of payments to purposes other than the extinguishment of the debt for which a lien might exist. There is no question in this jurisdiction that a lien does not exist and cannot be maintained for the advances of cash and, although [389] I understand it to be contended by the counsel for the plaintiff that cash advanced for the purpose of paying off labor may be recouped out of the

proceeds of the contract, if there be an agreement to that effect, thus leaving the balance of the claim subject to lien, yet I do not find any holding to that effect by our Supreme Court. The nearest approach to it is in the, I think, Allen and Redward case, where the Masonic Temple contract was involved, but the extent of which that decision went, as I regard it, was simply this, that, whereas the Circuit Court had found, as a matter of fact, that there had been such an arrangement between the subcontractor, the materialman Allen and the contractor Redward, and that Redward had given drafts upon the owner, namely, the Hawaiian Lodge, and that the owner had accepted the drafts, and that the moneys paid on account of the contract had been so appropriated by Allen, then the only ruling of the Supreme Court in the matter was that there was sufficient evidence in the case to support that finding of facts, and I am entirely without, or rather I have been entirely unable to find, any direct holding that such an arrangement might be made and carried into effect whereby the owners of the property could be prejudiced. Now, if Wong Wong could have taken any portion of the proceeds of that contract and had it applied in the extinguishment of his indebtedness for cash advanced, either for the purpose of paying labor or for other purposes, then undoubtedly he could have taken it all and, likewise, if he could have applied it to that purpose, then he could have applied it to any other purpose,—namely, the payment of promissory notes to third parties, in payment of grocery

bills and the expense of giving a luau or anything else, simply leaving outstanding [390] the lien for the price of the material. I do not believe that the law will uphold or tolerate any such course as that. It would be distinctly inequitable to the owners, who have no contract with the materialman.

Referring now to the state of the account between Wong Wong and Lewers & Cooke, it is to be observed that this suit is brought for a specific amount accruing from the sale of specific articles. I find that the articles were all furnished between the 21st day of December, or rather beginning the 21st day of December and ending the 31st day of October, 1914.

I find that according to the books of the plaintiff, which have been here produced and admitted in evidence for that purpose, on the date when the last received materials was furnished to Wong Wong, namely, October 31, 1914, there was an ostensible balance due from Wong Wong in the general course of dealing to Lewers & Cooke, upon the books of the latter, amounting to \$9646.36, but this balance took no account of the discount referred to, namely, \$101.80, which, being allowed, would leave the true balance from Wong Wong to Lewers & Cooke at that date, \$9554.56, and that balance included the \$1950 of cash advanced by Lewers & Cooke as well as materials here.

I further find as a fact that, between the dates of that balance, namely, when the last of these materials were furnished, and the date of this trial and as early as the 25th day of March, 1915, that balance

which stood upon the books of the plaintiff against Wong Wong, on the 31st day of October, 1914, had been entirely wiped out, in fact, on the 24th day of March, 1915, only \$4.21 of that balance remained unpaid, and the next day a payment of \$2000 was made.

Now, with reference to the question of the application of payments, I find that there was no application of the [391] money paid by Wong Wong on account of this contract, or, to put it perhaps more precisely, of the money paid by the Honolulu Skating Rink, Ltd., on account of this contract direct to Lewers & Cooke, upon the orders of Wong Wong; there was no application of any portion of that money by Lewers & Cooke, otherwise than to and upon its general account against Wong Wong. In other words, there was no application of any portion of that money, first to the extinguishment of the cash advances; the books of the company, which are certainly evidence against it was *well as* evidence in its favor, show distinctly that all the money received simply went into hodge podge as a credit to the account of Wong Wong, and the mere fact that in many or perhaps all of the instances there is a memorandum as showing the source or the contract from which the money comes, does not alter this conclusion.

The result of all this is this, that, as early as the 25th day of March, 1915, every cent of the obligation of Wong Wong to Lewers & Cooke which are included in the bills here sued upon, as well as and in addition to the \$1950 of cash advances, had been

repaid, consequently, at the date of the trial of this case, there was nothing due by Wong Wong to Lewers & Cooke, in respect of this bill, and the consequence is obvious, namely, that there must be judgment rendered for Wong Wong, the defendant in this case. Now, it is true that Wong Wong has made no defense; he has defaulted and so has the Honolulu Skating Rink, Ltd., but that does not mean that he has placed himself outside the pale of the law. Our theory and practice is very different from that obtaining in some states, as, for instance, California. In California, upon the default of—

Mr. PETERS.—May I call your Honor's attention to the fact [392] that Wong Wong confessed judgment in this matter? The Skating Rink defaulted.

The COURT.—How did he confess judgment?

Mr. PETERS.—He came up here in court at the opening day and confessed judgment.

The COURT.—I do not see what I can do about it, gentlemen. He did not owe the money—

(Argument.)

Well, I will go back to that. I understood him to confess the facts.

Mr. WITHINGTON.—Your Honor asked him to confess judgment.

Mr. PETERS.—That is the way I understood it, your Honor.

The COURT.—Here is a case set forth where the record and the evidence introduced by the plaintiff does not warrant a judgment. I don't know what

I am going to do about Wong Wong. He did not owe the— He didn't owe Lewers & Cooke a cent at the date of this trial relative to this particular claim; on the other hand, it had been wiped out a year and half earlier, more than that, nearly two years earlier. Well, I will proceed from there. Our law provides that there shall be a trial upon a default; even where a default is entered there shall still be a trial, be a hearing, and the plaintiff shall take nothing that he does not prove to the satisfaction of the Court he is entitled to. I regard it so in this case, that the effect of anything that Wong Wong said here in court was nothing more or less than a confession of the facts set forth in the declaration, and, upon the facts set forth in a declaration, although they may have been true at the date of the declaration, still, subsequent events have robbed them of their legal force and have exonerated Wong Wong from any liability in respect of these particular facts, I therefore adhere to the position that judgment must go for Wong Wong with costs. [393]

Now, with reference to the Skating Rink, Limited, and the individual defendants, it is obvious if there was nothing owing by Wong Wong at that time, that there is no lien in existence which could be enforced against their interests in the property; consequently, judgment goes in favor of all of the defendants.

Mr. WITHINGTON.—I call your Honor's attention to another question of fact, which is that this is not a motion for judgment, it is a motion for non-

suit. If this is an order of judgment we except to the—

The COURT.—That is right, that is correct; the announcement that judgment goes for these defendants is recalled and the decision now is that an involuntary nonsuit is entered against the plaintiff and with reference to each and all of the defendants.

Mr. WITHINGTON.—We except to the order of the Court, and we further except to the Court's finding facts on the motion for a nonsuit, and we particularly, without waiving any objection to other facts which may have been found, except to the finding that there was a discount of 5% on the items referred to by the Court, the evidence showing that that discount was simply a discount on prompt payment; also to the finding that the advances of \$1950 do not appear to have been expended and applied on this contract so as to relieve the lienable items, the items advances made for labor, it appearing in this case affirmatively that not only the \$1950 was applied but \$520 more was applied from Lewers & Cooke. We also except to the finding that there has been a payment by application of subsequent sums from Wong Wong, inasmuch as the evidence affirmatively shows that the only sum which has been received and applied are sums—

The COURT.—Totalling \$3015.

Mr. WITHINGTON.—No, no; something more than that; there is [394] something—no, that is right, \$3015; I think your Honor is right, I cannot recall the exact figure, but \$3015—

The COURT.—I will give it to you right now.

Mr. WITHINGTON.—Being amounts testified to by Mr. Coombs.

The COURT.—That is right.

Mr. WITHINGTON.—Yes, whatever the amounts are, and that no further sum had been paid, it affirmatively appears to that effect. I don't know that it is necessary to make these exceptions other than the exceptions to the granting of the motion for nonsuit.

The COURT.—I have omitted something that I intended to insert and I now insert it as among the reasons for granting of the nonsuit.

There were several objections taken to the validity of the lien, one being that the mere filing of the notice of the lien and the account and the service thereof upon the defendants was not sufficient to bring the lien into being, to create a grip or lien upon the interests and property thought to be subjected to it, for the reason that something else was required by law, namely, the keeping of a certain record and the entry therein by the clerk of certain specific facts. Now, I hold upon that point that the lien was brought into being and completed by the filing of the notice that has been filed in this case and the service of a certified copy thereof upon the defendants and, as a matter of fact, I find that such service was duly made; consequently, a lien existed at the date of that filing, namely, December 11, 1914, and I further find, as a matter of law, that intermediate of the filing and creation of the lien and the bringing of suit, it was and is necessary under

the law to make a demand upon each and all of the defendants, certainly upon each and all of the defendants whom it is thought [395] to hold. I find that no demand such as now suggested was made upon Honolulu Skating Rink, Ltd., or upon either of the defendants Rosenbledt or Harrison, and that, in respect of those three defendants last named there was no right to bring or to maintain this suit, and, for that reason alone, if all others should fail, the nonsuit as to them must be granted. Now, perhaps, you would care to amplify your exceptions?

Mr. WITHINGTON.—No, we merely ask to again except to the order of nonsuit as now amended, or the granting of the motion for a nonsuit.

The COURT.—Very well, these exceptions will be entered of record.

I HEREBY CERTIFY the above and foregoing to be a complete and accurate extension of my shorthand notes of the proceedings had and testimony taken during the trial of the above-entitled matter.

JAMES L. HORNER,

Official Reporter.

Delivered to Castle & Withington this 4th day of May, 1917. [396]

[Endorsements]: Circuit Court, First Jud. Circuit.
June 2, 1917.

No. 1041. Received and filed in the Supreme Court March 21, 1918, at 11:30 A. M. J. A. Thompson, Clerk.

No. 1034. Received and filed in the Supreme

Court August 2, 1917, at 10:35 A. M. J. A. Thompson, Clerk.

No. 1187. Received and filed in the Supreme Court June 5, 1919, at 11:35 A. M. J. A. Thompson, Clerk.

No. 1291. Received and filed in the Supreme Court Sept. 27, 1920, at 3:10 P. M. J. A. Thompson, Clerk. [397]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

ACTION TO ENFORCE A MECHANIC'S LIEN
LAW No. 8145.

WONG WONG,

Plaintiff,

vs.

HONOLULU SKATING RINK, LIMITED, a Corporation;
MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, Morris Rosenbledt and Fred Harrison, as principals, and J. F. Haglund and William Lishman, of Honolulu, City and County of Honolulu, Territory of Hawaii, as sureties, are held and firmly bound unto Wong Wong, his heirs, executors, administrators and assigns, in the penal sum of Ten Thousand Five Hundred Eighty Dollars (\$10,580.00), the pay-

ment of which well and truly to be made unto the said Wong Wong, his heirs, executors, administrators or assigns, we do hereby bind ourselves, our and each of our respective heirs, executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

THAT, WHEREAS, the said Wong Wong, plaintiff above named, did on the 4th day of September, A. D. 1918, in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, recover a judgment against Honolulu Skating Rink, Limited, one of the defendants above named, for the sum of \$5,288.67, which [398] sum was also ordered and adjudged a lien upon the premises described therein and upon all the right, title and interest of the defendants Morris Rosenbledt, Fred Harrison and Honolulu Skating Rink, Limited, in and to said premises, or any person claiming under them; from which said judgment of the said First Circuit Court the said Morris Rosenbledt and Fred Harrison have prayed for and obtained an order allowing them twenty (20) days from and after the filing of the transcript of the evidence herein within which to serve and present their joint and (or) several Bill of Exceptions herein;

AND, WHEREAS, the said Wong Wong, did on the 18th day of March, A. D. 1919, cause a writ of execution to issue on said judgment out of the said First Circuit Court; upon which execution the said Morris Rosenbledt and Fred Harrison have prayed

for and obtained an order whereby said judgment was arrested and the execution stayed pending the consideration of the bill of exceptions of the defendants, Morris Rosenbledt and Fred Harrison, by the Supreme Court of the Territory of Hawaii, and upon condition that the defendants, Morris Rosenbledt and Fred Harrison, file their bill of exceptions within four (4) weeks from the 29th day of March, A. D. 1919, and pay all accrued costs of court, and also file an approved bond as required by law.

NOW, THEREFORE, shall the above-bounden principals prosecute their said exceptions without delay, and shall not remove or dispose of the property described in the said judgment to the detriment of the plaintiff herein, in the event of their exceptions being overruled, then this obligation shall be null and void, otherwise to remain in full force and effect. [399]

IN WITNESS WHEREOF, the above-named principals and sureties have hereunto set their hands and seals, this 2d day of April, 1919.

_____, (Seal)
FRED HARRISON, (Seal)
Principals.
J. F. HAGLUND, (Seal)
WILLIAM LISHMAN, (Seal)
Sureties.

O. K. as to form.

CASTLE & WITHINGTON.

Territory of Hawaii,
City and County of Honolulu,—ss.

J. F. Haglund and William Lishman, being first duly sworn, on oath, each for himself and not one

for the other, deposes and says: That he is one of the sureties upon the foregoing bond and undertaking; that he has property situated within the Territory of Hawaii, subject to execution, and is worth in property within said Territory, the amount of the penalty specified in said bond or undertaking over and above all of the debts and liabilities.

J. F. HAGLUND.

WILLIAM LISHMAN.

Subscribed and sworn to before me this 2d of April
A. D. 1919.

[Seal]

P. D. KELLETT,

Notary Public, First Judicial Circuit, Territory of
Hawaii.

The foregoing bond is approved as to amount and
sufficiency of surety, this 2d day of April, A. D. 1919.

[Seal]

J. T. DE BOLT,

Judge Presiding. [400]

[Endorsed]: L. No. 8145. 5/117. In the Cir-
cuit Court of the First Judicial Circuit, Territory of
Hawaii. Wong Wong, Plaintiff, vs. Honolulu Skat-
ing Rink, Limited, a Corporation; Morris Rosenbledt
and Fred Harrison, Defendants. Bond. Circuit
Court, First Circuit. Filed Apr. 2, 1919, at 2:56
o'clock P. M. B. N. Kahalepuna, Clerk.

No. 1291. Rec'd and filed in the Supreme Court
Sept. 27, 1920, at 3:10 P. M. J. A. Thompson, Clerk.

[401]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

ACTION TO ENFORCE A MECHANIC'S LIEN.

WONG WONG,

Plaintiff,

vs.

**HONOLULU SKATING RINK, LIMITED, a Corporation,
MORRIS ROSENBLEDT and
FRED HARRISON,**

Defendants.

**Direct Interrogatories to be Propounded to Morris
Rosenbledt.**

1. What is your name?
2. Where do you live?
3. If your answer to the last preceding interrogatory is that you live in San Francisco, City and County of San Francisco, State of California, state how long you have lived in that place and since what time.
4. Where did you live before living in San Francisco and for how long?
5. What is your business?
6. Are you the Morris Rosenbledt named as one of the defendants in the above-entitled action?
7. Do you know of a certain lease from Morris Rosenbledt and Fred Harrison as lessor to the Honolulu Skating Rink, Limited, an Hawaiian corporation, as lessee, dated the 21st day of September, A. D. 1914, and recorded in the office of the Registrar

of Conveyances of the Territory of Hawaii, at Honolulu, in liber 403, at pages 376-381. [402]

8. If your answer to the last preceding interrogatory is in the affirmative, state whether or not you are the Morris Rosenbledt named as one of the lessors therein.

9. State whether you signed said lease and if so when and where, and in whose presence.

10. State where you were on the 21st of September, 1914.

11. If your answer to the last preceding interrogatory is to the effect that you were without the Territory of Hawaii, state whether or not you returned to the Territory of Hawaii thereafter and when.

12. State upon what steamer you returned to Honolulu subsequent to the 21st of September, 1914.

13. State whether or not at the time you signed that lease there were any other signatures of the contracting parties subscribed thereto, and if so, whose signatures.

14. Who, if any one, signed said lease upon the occasion of your signing it?

15. Did you acknowledge your signature to said lease, and if so, before whom and when?

16. What demand, if any, was ever made upon you by the plaintiff above named for the amount (in whole or in part) for which a lien is prayed in the above-entitled action?

17. If your answer to the last preceding interrogatory is that demand was made upon you,

state whether such demand was made between the time of the filing of the lien and the institution of the above-named action for its enforcement.

Dated this 5th day of February, A. D. 1916.

Respectfully submitted,

E. C. PETERS,

Attorney for Morris Rosenbledt and Fred Harrison, Defendants. [403]

City and County of Honolulu,
Territory of Hawaii,—ss.

I hereby certify that on, to wit, Febry. 5, 1916, I did deposit a full, true and correct copy of the foregoing Direct Interrogatories to be propounded to M. Rosenbledt in the United States Postoffice at Honolulu, City and County of Honolulu, Territory of Hawaii inclosed in an envelope duly postpaid and addressed to Messrs. Castle & Withington, at Honolulu aforesaid, in time to reach such address in due course of mail, to wit: 12:30 p. m.

P. D. KELLETT, Jr.

[Endorsed]: L. No. 8145. R. 5/111. Circuit Court First Circuit, Territory of Hawaii. Wong Wong vs. Honolulu Skating Rink, Limited, et al. Direct Interrogatories to be Propounded to M. Rosenbledt. Filed at 1:30 o'clock P. M. February 5, 1916. Henry Smith, Clerk. [404]

In the Circuit Court of the First Circuit, Territory
of Hawaii.

ACTION TO ENFORCE A MECHANIC'S LIEN.

WONG WONG,

Plaintiff,

vs.

**HONOLULU SKATING RINK, LIMITED, a Cor-
poration; MORRIS ROSENBLEDT and
FRED HARRISON,**

Defendants.

**Cross-Interrogatories to be Propounded to Morris
Rosenbledt.**

CROSS-INTERROGATORY No. 1.

If you answer that no demand was made on you by the plaintiff above named for the amount, in whole or in part, for which a lien is prayed in the above-entitled action, will you please say whether you are not mistaken about that and whether, as a matter of fact, such demand was made, and whether you and your codefendant, Mr. Fred Harrison, did not see your attorney, Mr. E. C. Peters, and Mr. Peters did not advise you that the lien would not hold against the land, and that thereupon you agreed with the said Fred Harrison that he should report to the plaintiff that Mr. Peters had advised that the lien would not hold against the land and that you would not pay the amount demanded or any portion thereof?

CROSS-INTERROGATORY No. 2.

Did anyone of the things which you have been

asked in Cross-Interrogatory No. 1 take place? If so, state what? [405]

CROSS-INTERROGATORY No. 3.

Was not the claim of lien attached to the complaint in this action served on you between the time of the filing of the same and the filing of the suit?

CROSS-INTERROGATORY No. 4.

If you answer Cross-Interrogatory No. 3 that you do not remember or that the claim of lien was not served upon you, please attach to this deposition any paper which was served upon you in reference to this matter during such time.

Dated February 12, 1916.

CASTLE & WITHINGTON,

Attorneys for Plaintiff. [406]

[Endorsed]: Original. L. No. 8145. Reg. 5, pg. 111. Circuit Court, First Circuit, Territory of Hawaii. Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Ltd., a Corporation, et al., Defendants. Cross-Interrogatories to be Propounded to Morris Rosenbledt. Filed at 9:40 o'clock A. M. February 14th, 1916. J. A. Dominis, Clerk. [407]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

L. No. 8145. Reg. 5, pg. 111.

Deposition of Morris Rosenbledt.

Deposition of Morris Rosenbledt, a witness sworn and examined under and by virtue of the

annexed Commission issued out of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in a certain cause therein pending between Wong Wong, Plaintiff, and Honolulu Skating Rink, Limited, a corporation, Morris Rosenbledt and Fred Harrison, defendants.

State of California,

City and County of San Francisco,—ss.

MORRIS ROSENBLEDT, of the City and County of San Francisco, residing at No. 160 Palm Avenue, being first duly sworn to speak the truth, the whole truth and nothing but the truth, deposed and said as follows, to wit:

To the First Interrogatory, he saith: Morris Rosenbledt.

To the Second Interrogatory, he saith: No. 160 Palm Avenue, San Francisco, California.

To the Third Interrogatory, he saith: Since the 15th day of July, 1915.

To the Fourth Interrogatory, he saith: From the 11th day of May to the 15th day of July, 1915, I lived at Sausalito, Marin Co., California, and prior to that time my home was at the Hawaiian Islands for seventeen years, about three years of which I spent on the Island of Kauai and the balance of the time at Honolulu. [408]

To the Fifth Interrogatory, he saith: Commission merchant.

To the Sixth Interrogatory, he saith: Yes.

To the Seventh Interrogatory, he saith: Yes, I do.

To the Eighth Interrogatory, he saith: I am.

To the Ninth Interrogatory, he saith: Yes, I signed

said lease, on the 16th day of October, 1914, in the office of Mr. E. C. Peters, Atty., McCandles Bldg., Honolulu, Hawaii, in the presence of Mr. Peters and Fred Harrison, and I acknowledged it before Miss Hilda Smith, a Notary Public, at the same time and place.

To the Tenth Interrogatory, he saith: I was in Chicago, Ill.

To the Eleventh Interrogatory, he saith: I returned Oct. 13, 1914.

To the Twelfth Interrogatory, he saith: "Matsonia."

To the Thirteenth Interrogatory, he saith: Yes, there were. It was signed by The Honolulu Skating Rink, Ltd., by Fred Ohrt, President and George S. Ikeda, Treasurer.

To the Fourteenth Interrogatory, he saith: Fred Harrison.

To the Fifteenth Interrogatory, he saith: Yes, I acknowledged my signature to said lease before Miss Hilda Smith, a notary public, at the office of Mr. E. C. Peters on the 16th day of October, 1914.

To the Sixteenth Interrogatory, he saith: No demand whatsoever has ever been made upon me in whole or in part.

To the First Cross-interrogatory, he saith: I am not mistaken about the matter. There was no demand made. For our own satisfaction Mr. Harrison and I called upon our attorney, Mr. E. C. Peters, and were advised by him that if there were any trouble about any mechanic's lien being filed upon the property that the lien would not

hold against the land. Subsequently, after the filing of the suit I believe I did speak to a Mr. Coombs, a representative of Lewers and Cooke, Ltd., the plaintiff, and told him that we would contest the claim.

To the Second Cross-interrogatory, he saith: My answer to this would simply be a repetition of what I just answered in Cross-interrogatory No. 1. [409]

To the Third Cross-interrogatory, he saith: I do not know what is meant by the term "claim of lien." A copy of a notice of lien was served upon me by a police officer on December 12th, 1914, and although I have not the complaint in this case at hand, I think a similar copy was attached to the complaint.

To the Fourth Cross-interrogatory, he saith: No paper of any kind was served upon me before the suit was filed, except a copy of the notice of lien. This and the summons and complaint, which were the only papers served upon me, were left with Mr. Peters, my attorney.

MORRIS ROSENBLDT.

Subscribed and sworn to before me this 2d day of August, 1916.

[Seal]

W. T. HESS,

Notary Public in and for the City and County of San Francisco, State of California, Room 708, Hearst Bldg. [410]

State of California,
City and County of San Francisco,—ss.

I, William T. Hess, the Commissioner named

in the annexed Commission, do hereby certify that the witness, Morris Rosenbledt, appeared before me and, after being first duly sworn, his evidence was taken down in shorthand by Miss H. G. Heyl, a shorthand reporter and stenographer, a disinterested person, and by her thereafter transcribed to typewriting, and when so transcribed to typewriting was read over by the said witness, and having been corrected by him in every particular desired, he subscribed the same in

W. T. H.
N. P.

August,

my presence on this 2d day of ~~June~~, 1916, at my office Room No. 708, Hearst Building, in the said City and County of San Francisco, State of California. I furthermore certify that I have personal knowledge of said witness.

IN WITNESS WHEREOF, I have here unto set my hand and affixed my official seal this

W. T. H.
N. P.

August,

2d day of ~~June~~, 1916.

[Seal]

W. T. HESS,

Notary Public, in and for the City and County of San Francisco, State of California. [411]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

ACTION TO ENFORCE A MECHANICS'
LIEN.

LAW No. 8145.

WONG WONG,

Plaintiff,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants.

Commission to Take Deposition.

The Territory of Hawaii: To William T. Hess,
a Notary Public in and for the City and
County of San Francisco, State of California:

KNOW YE, that we, in confidence of your
prudence and fidelity, have appointed you Com-
missioner, and by these presents do give you full
power and authority diligently to examine, upon
corporal oath or affirmation before you to be taken,
and upon the interrogatories and cross-interro-
gatories hereunto annexed, Morris Rosenbledt,
Esqr., of No. 160 Palm Avenue, San Francisco,
California, as a witness in the above-named cause
pending undetermined in the Circuit Court of the
First Judicial Circuit of the Territory of Hawaii,
wherein Wong Wong is the plaintiff, and Hono-
lulu Skating [412] Rink, Limited, a corporation,
Morris Rosenbledt and Fred Harrison are defend-

ants, numbered and docketed in said First Judicial Circuit Court as Law No. 8145, on behalf of the defendant; and we do hereby require you, William T. Hess, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal as notary public in and for the City and County of San Francisco, State of California, directed to Henry Smith, Clerk of the said Circuit Court of the First Judicial Circuit of the Territory of Hawaii, aforesaid, as soon as may be convenient after the execution of this Commission, and that you return the same, when executed as above directed, with the title of the case endorsed on the envelope of the Commission.

WITNESS the Honorable T. B. STUART, Third Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, this 23d day of May, A. D. 1916.

[Seal]

HENRY SMITH,
Clerk. [413]

[Endorsed]: L. 8145. 5. 111. Circuit Court, First Circuit. Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Limited, a Corporation, Morris Rosenbledt and Fred Harrison, Defendants. Commission to Take Depositions. Issued May 23, 1916. Henry Smith, Clerk. Filed Friday, June 28th, 1918, at 11:15 A. M. Arthur E. Restarick, Clerk.

No. 1187. Rec'd and filed in the Supreme Court June 5, 1919, at 11:35 A. M. J. A. Thompson, Clerk.

No. 1291. Rec'd and filed in the Supreme Court September 27, 1920, at 3:10 P. M. J. A. Thompson, Clerk. [414]

In the Supreme Court of the Territory of Hawaii.
October Term, 1920.

No. 1291.

WONG WONG

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON.

Judgment of Supreme Court.

ERROR TO CIRCUIT COURT, FIRST
CIRCUIT.

Hon. C. S. FRANKLIN, Judge.

Argued January 13, 1921. Decided January 25,
1921.

COKE, C. J., KEMP, J., and CIRCUIT JUDGE
DE BOLT in Place of EDINGS, J., Disquali-
fied.

Trial—Effect of sustaining exception.

When an exception is sustained and notice thereof is received by the Circuit Court it is the duty of the Circuit Court as a matter of law and not in consequence of any direction of this court to give effect to our decision.

Same—Same—Circuit Court may look to opinion to ascertain effect of decision.

The effect of sustaining an exception without direction depends upon the grounds on which it is based as expressed in the opinion of the court and the Circuit Court in order to ascertain the effect may look not only to the formal

notice transmitted to it but to the whole record, including our opinion.

Same—Effect of sustaining exception which goes to the merits.

If the exception sustained goes to the merits of the case, that is, constitutes such a holding as necessitates a certain [415] judgment there is nothing left but to enter such a judgment, hence the sustaining of an exception to an order overruling a motion for nonsuit on the ground that there was nothing due the plaintiff when the suit was filed left nothing for the Circuit Court to do but enter the judgment of nonsuit. [416]

Opinion of the Court by KEMP, J.

The history of this litigation and the transactions out of which it grew may be found in the opinions of this Court in this case and the case of *Lewers & Cooke vs. Wong Wong*. The opinions in *Lewers & Cooke vs. Wong Wong* are reported in 22 Haw. 765 and 24 Haw. 39. The former opinions in this case are reported in 24 Haw. 181, and 25 Haw. 92, 347 and 413. We do not deem it necessary to repeat that history. It will be sufficient to state that when the case was last before us on exceptions brought here by the defendants *Rosenbledt and Harrison* we held that at the time demand was made and suit filed there was nothing due on the account for which the lien was claimed; that any matters which would constitute a defense to an action of *assumpsit* on the account would also constitute a good defense to the suit to fore-

close the lien and that such defense was available to other defendants than the debtor. This was all reasoned out in our opinion and the opinion concluded with the statement that "The decision and judgment are contrary to the law and the evidence and the exceptions thereto must therefore be sustained and it is so ordered" (25 Haw. 347, 356). Plaintiff filed his petition for rehearing and as ground therefor, among others, claimed that the order sustaining the exceptions to the decision and judgment as contrary to the law leaves it doubtful whether a new trial, further proceedings or a final judgment is ordered in the Circuit Court. In an unpublished opinion *per curiam* of March 10, 1920, denying plaintiff's petition for rehearing, we said: "We do not see how there could be any doubt as to the effect of our holding upon this case. The effect of our holding is that when the present suit was instituted there was nothing due under the contract and that this defense could be set up by other defendants than the debtor. Having sustained this contention of the owners who were entitled to interpose the defense the present suit [417] must abate." Defendants then filed a motion to amend the decision by adding thereto an order sustaining their exception No. 25 to the denial by the Court below of their motion for a nonsuit and adding a direction to the trial Court to grant the motion for said nonsuit. In granting this motion we stated that "In our decision which they ask to have amended we held that there was nothing due on said contract when the suit was filed and ordered the exceptions to the decision and

judgment as contrary to the law and the evidence sustained. This holding we think necessarily sustains appellants' exception No. 25 to the overruling of their motion for a nonsuit, but in order that there may be no uncertainty or doubt in respect thereto the motion to amend the decision is granted and the decision is ordered amended so as to include the sustaining of appellants' exception No. 25 to the denial by the Court of their motion for a nonsuit" (25 Haw. 413). We did not, however, include an order to the Circuit Court to grant the motion for a nonsuit as requested in said motion. Thereafter notice of decision duly issued to the Circuit Court, which notice reads as follows: "In the above-entitled cause, pursuant to the opinion of the above-entitled court filed March 1, A. D. 1920, the decision and judgment are contrary to the law and the evidence and the exceptions thereto must therefore be sustained and it is so ordered. And in pursuance of the decision of the above-entitled court on the motion to amend decision rendered on the 8th day of April, A. D. 1920, exception No. 25 of the appellants, Morris Rosenbledt and Fred Harrison, to the denial by the Court of their motion for a nonsuit is sustained." After receipt of this notice of decision by the Circuit Court the defendants presented to the Circuit Court a judgment and decision for signature and entry which it is asserted were pursuant to and in conformity with the decision of this court. The matter of signing the decision and entering the judgment coming on before the Circuit Court was contested by the plaintiff but notwithstanding his opposition

thereto the decision was [418] thereupon signed and filed and judgment entered granting the nonsuit in favor of the defendants Rosenbledt and Harrison.

Plaintiff again brings the matter here upon writ of error and his assignments of error challenge the correctness of the ruling of the Circuit Judge in signing said decision and entering said judgment and also challenges the correctness of our holding when the case was last here on exceptions.

We shall enter into no discussion of the questions determined by us when the case was last here. They were then decided after exhaustive and able arguments and we are fully satisfied with the correctness of our holdings. We think it is entirely proper, however, for the plaintiff to again present those questions in order to preserve his rights in the event of a further appeal should the decision in this hearing go against him. (*Bierce vs. Waterhouse*, 19 Haw. 594.)

Plaintiff contends that since we merely sustained defendants' exceptions and did not order the Circuit Court to grant their motion for a nonsuit he was entitled to a trial *de novo*; that if this was not our intention there should have been an order for the entry of judgment for defendants. When exceptions are overruled that is the end of the functions of this court relating thereto, nothing remaining but the order, notice or *remittitur*, on receipt of which the judgment in the Circuit Court, if entered but suspended pending the exceptions, remains in full force requiring no affirmance or other recognition from this court. If no judgment

was entered by the Circuit Court, upon notice of the overruling of the exceptions it becomes the duty of the Circuit Court as a matter of law, and not in consequence of any direction of this court, to enter a proper judgment. (*Meheula vs. Pioneer Mill Co.*, 17 Haw. 91; *Cotton vs. Hawaii*, 211 U. S. 162.) Likewise when exceptions are sustained and notice thereof is received by the Circuit Court it is the duty of the Circuit [419] Court as a matter of law, and not in consequence of any direction of this Court, to give effect to our decision.

It is true that this Court has in many instances where exceptions were sustained ordered appropriate action by the Circuit Court, as will be seen from an inspection of our published reports (see *Ripley & Davis vs. Kapiolani Est.*, 22 Haw. 86; *Lewers & Cooke vs. Fernandez*, 23 Haw. 744), but we think that such orders are entirely unnecessary, and at least technically wrong though not objectionable from a practical standpoint. The general practice of this Court in passing upon questions presented upon exceptions is to overrule or sustain the exceptions and leave it to the Circuit Court without directions to give effect to our decision. The effect of a reversal without directions depends upon the grounds on which it is based as expressed in the opinion of the court (*Broderick vs. District Court*, 91 Minn. 161, 97 N. W. 581), and we can conceive of no distinction on this point between a reversal without directions and the sustaining of an exception without directions. In either case, in order to ascertain the effect of our decision, the Circuit Court may look not only to the formal

notice transmitted to it, but to the whole record in the case, including our opinion. (*Wells Fargo & Co. vs. Taylor*, — U. S. —, decided December 6, 1920.)

Let us assume that a defendant in a criminal case after conviction prosecutes an exception to an order overruling a motion to quash the indictment against him and the exception is sustained but no order made directing the action of the Circuit Court. Upon the receipt of a notice that such exception has been sustained it would certainly be the duty of the Circuit Court as a matter of law to set aside the judgment of conviction and sustain the motion theretofore overruled. If the defendant in a civil action after judgment should prosecute an exception to an order overruling a demurrer to the complaint, the demurrer being based on more than one ground, and the exception be [420] sustained but no order made directing the action of the Circuit Court it would likewise be the duty of the Circuit Court as a matter of law to vacate the judgment and sustain the demurrer and it would undoubtedly do so without directions from this court. This, however, would not require the entry of a judgment against the plaintiff unless it appeared from the opinion that the ground of demurrer sustained was of such a nature as to be decisive of the merits of the case, or if not of such a nature the plaintiff declined to amend his pleading. In other words, the Circuit Court is left to handle the situation as it appears in the light of the opinion after receiving notice of the decision. If the exception sustained goes to the merits of

the case, that is, constitutes such a holding as necessitates a certain judgment, there is nothing left for the Circuit Court but to enter such a judgment.

In the case at bar we held upon what appears to be all the evidence available that at the time this suit was instituted there was nothing due the plaintiff and sustained an exception to the overruling of defendants' motion for a nonsuit for that reason. The motion for nonsuit was based on a number of grounds. Under these circumstances it was the right, and even the duty, of the Circuit Court to examine our opinion to determine what action it should take in order to give effect to our opinion. In the light of our opinion there was nothing left for the Circuit Court to do but to enter a judgment of nonsuit in favor of these defendants. There is nothing in *Hoomana Naauao vs. Makekau*, 25 Haw. 593, inconsistent with this conclusion as counsel seem to think.

Finding no error in the record requiring a reversal of the judgment entered, the same should be affirmed, and it is so ordered.

JAMES L. COKE.

S. B. KEMP.

J. T. DE BOLT.

A. WITHINGTON (ROBERTSON, CASTLE & OLSON on the Brief), for Plaintiff in Error.
E. C. PETERS and H. R. HEWITT (PETERS & SMITH on the Brief), for Defendants in Error. [421]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. October Term, 1920. Wong Wong

v. Honolulu Skating Rink, Limited, a Corporation,
Morris Rosenbledt and Fred Harrison. Opinion.
Filed January 25, 1921, at 8:50 A. M. J. A.
Thompson, Clerk. [422]

In the Supreme Court of the Territory of Hawaii.
ERROR TO CIRCUIT COURT, FIRST CIR-
CUIT.

No. 1291.

WONG WONG,

Plaintiff-Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants-Defendants in Error.

Judgment of Supreme Court.

In the above-entitled cause, pursuant to the opin-
ion of the above-entitled court filed on January 25,
1921, the Court finding no error in the record re-
quiring a reversal of the judgment entered, the same
should be affirmed, and it is so ordered.

Dated at Honolulu, Territory of Hawaii, this 18th
day of February, A. D. 1921.

By the Court.

[Seal]

J. A. THOMPSON,

Clerk of the Supreme Court. [423]

[Endorsed]: In the Supreme Court of the Terri-
tory of Hawaii. Wong Wong, Plaintiff in Error,

vs. Honolulu Skating Rink, Limited, a Corporation,
at al., Defendants in Error. Judgment. Filed
February 18, 1921, at 10:50 A. M. J. A. Thompson,
Clerk. [424]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1920.

WONG WONG,

Plaintiff,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants.

**Petition for Writ of Error from the United States
Circuit Court of Appeals for the Ninth Circuit
to the Supreme Court of the Territory of Hawaii.**

To the Honorable Chief Justice of the Supreme
Court of the Territory of Hawaii:

Wong Wong, petitioner in the above-entitled
cause, feeling himself aggrieved by the decision and
judgment in said cause affirming the judgment of the
Circuit Court of the First Judicial Circuit of the Ter-
ritory of Hawaii, which judgment of the Supreme
Court of the Territory of Hawaii was entered on the
18th day of February, A. D. 1921, and complaining
says that there is manifest error to the damage of the
petitioner in the same, which errors are specifically
set forth in assignment of errors filed herewith to
which reference is hereby made; that the amount in-

volved in said suit exclusive of costs exceeds the sum or value of Five Thousand Dollars (\$5,000.00); and that it is a proper case to be reviewed by said Circuit Court of Appeals;

AND THEREFORE your petitioner would respectfully pray that a writ of error be allowed to him in the above-entitled cause and that he be allowed to prosecute the same [425] to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; that an order be made fixing the amount of security the petitioner shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit and that the clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings and papers in this cause duly authenticated for the correction of the errors so complained of and that a citation and supersedeas may issue.

And your petitioner will ever pray.

Dated, Honolulu, T. H., March 7, 1921.

WONG WONG,
Petitioner.

Subscribed and sworn to before me this 7th day of March, 1921.

[Seal]

FLORENCE LEE.

Notary Public, First Judicial Circuit, Territory of Hawaii.

ROBERTSON, CASTLE & OLSON,
Attorneys for Petitioner.

The foregoing petition is granted, a writ of error allowed, and the amount of bond on said writ of Error is fixed at \$500.00.

Dated Mch. 24, 1921.

[Seal]

JAMES L. COKE,
Chief Justice. [426]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. October Term, 1920. Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Ltd., et al., Defendants. Petition for Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the Territory of Hawaii. Filed March 24, 1921, 9:25 A. M. J. A. Thompson, Clerk. [427]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1920.

WONG WONG,

Plaintiff,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLDT and
FRED HARRISON,

Defendants.

Assignment of Errors (Original).

Now comes the above-named plaintiff, Wong Wong, and says in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

(1) That the Court erred in affirming the judgment of the Circuit Court of the First Circuit of the Territory of Hawaii dated April 12, 1920, which was rendered without trial of fact, modifying the judgment of September 4, 1918, of said Circuit Court, and ordering that the judgment against the defendant Honolulu Skating Rink, Limited, be released as a lien upon the land of the defendants Rosenbledt and Harrison;

(2) That the said Court erred in ordering a nonsuit for the defendants Rosenbledt and Harrison;

(3) That the said Court erred in affirming the allowance of the motion for nonsuit of said defendants Rosenbledt and Harrison on the ground that nothing was due to the plaintiff by the defendant Honolulu Skating Rink, Limited, when the effect of the allowance of said motion and rendering said judgment was to leave the personal judgment against said Honolulu Skating Rink, Limited, undisturbed, save as to its being a lien on the land of said Morris Rosenbledt and Fred Harrison [428] under Chapter 162 of the Revised Laws of Hawaii 1915;

(4) Said Court erred in holding that the Honolulu Skating Rink, Limited, owed the plaintiff nothing in said cause and at the same time holding that

the plaintiff have judgment against the said Honolulu Skating Rink, Limited, in the sum of \$3,998.60 with interest in the sum of \$1,103.73 and costs in the sum of \$186.35 in said cause;

(5) Said Court erred in upholding the vacating and setting aside of that portion of the judgment entered by the Circuit Court of the First Judicial Circuit in said Territory in said cause on the 4th day of September, 1918, for the plaintiff and against the defendants Morris Rosenbledt and Fred Harrison, whereby the personal judgment was found by a decision of said Circuit Court for the plaintiff therein and for statutory attorneys' fees and costs of suit as taxed against the Honolulu Skating Rink, Limited, and was declared to be a lien under Chapter 162 of the Revised Laws of Hawaii 1915, on the interest of the defendants Morris Rosenbledt and Fred Harrison in certain land described in plaintiff's complaint in said cause.

(6) That the Supreme Court erred in not affirming the judgment of the Circuit Court of September 4, 1918.

Dated Honolulu, T. H., March 7, 1921.

ROBERTSON, CASTLE & OLSON,
Attorneys for Plaintiff. [429]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. October Term, 1920. Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Ltd., Defendants. Assignment of Errors. Filed March 24, 1921, at 9:25 A. M. J. A. Thompson, Clerk.
[430]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1920.

WONG WONG,

Plaintiff,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLDT and
FRED HARRISON,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That Wong Wong, as principal, and Frederick J. Lowery, as surety, are held and firmly bound unto the Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison in the penal sum of Five Hundred Dollars (\$500.00), for the payment of which, well and truly to be made to said Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, we bind ourselves and our respective heirs, executors, administrators and assigns firmly by these presents.

THE CONDITION of the above obligation is such that, whereas, on the 29th day of March, 1921, the above-bounded principal sued out a writ of error to the United States Circuit Court of Appeals of the Ninth Circuit from that certain judgment made and entered in the above-entitled court and cause on the 18th day of February, 1921, by the Supreme Court of the Territory of Hawaii.

NOW, THEREFORE, if the said principal shall prosecute his said writ of error to effect and answer all damages and costs if he fails to sustain his writ of error, then this obligation shall be void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF the said Wong Wong, principal, and Frederick J. Lowrey, surety, have hereunto set their hands this [431] 24th day of March, 1921.

WONG WONG,
Principal.
FREDERICK J. LOWREY,
Surety.

The foregoing bond is approved.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [432]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. October Term, 1920. Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Ltd., et al. Bond on Writ of Error. Filed March 29, 1921, at 9:39 A. M. J. A. Thompson, Clerk. [433]

In the Supreme Court of the Territory of Hawaii.
WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED,
MORRIS ROSENBLDT and FRED HAR-
RISON,

Defendants in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America, to
the Honorable the Judges of the Supreme Court
of the Territory of Hawaii, GREETING:

Because in the record and in the proceedings, as also in the rendition of judgment in said Supreme Court of the Territory of Hawaii before you, in the case of Wong Wong, Plaintiff, vs. Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, Defendants, a manifest error has happened, to the great prejudice and damage of said Wong Wong, petitioner and plaintiff, as is said and appears by the petition herein,—

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at the said [434] place in said Circuit Court thirty days after this date, and the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 29th day of March, A. D. 1921.

Attest my hand and the seal of the Supreme Court of the Territory of Hawaii, at the clerk's office, Honolulu, Territory of Hawaii, on the day and year last above written.

[Seal] J. A. THOMPSON,
Clerk of Supreme Court, Territory of Hawaii.

Allowed this 29th day of March, A. D. 1921.

JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory of Hawaii. [435]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, Defendants in Error. Writ of Error. Filed March 29, 1921, at 11:20 A. M. J. A. Thompson, Clerk. [436]

In the Supreme Court of the Territory of Hawaii.

WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED,
MORRIS ROSENBLEDT and FRED HARRISON,

Defendants in Error.

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States of America, to
Honolulu Skating Rink, Limited, Morris Rosen-
bledt and Fred Harrison, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Wong Wong is plaintiff in error and you are defendants in error, to show cause, if any there may be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 29th day of March, A. D. 1921.

Honolulu, March 29th, 1921.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court of the Terri-
tory of Hawaii. [437]

Service of the within citation is hereby admitted this 29th day of March, A. D. 1921.

PETERS & SMITH,
A. G. A.

Attorneys for Morris Rosenbledt and Fred Harri-
son.

HONOLULU SKATING RINK, LIMITED,
By FRED OHRT.

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, Defendants in Error. Citation on Writ of Error. Filed March 29, 1921, at 11:19 A. M. and issued for service. J. A. Thompson, Clerk.

Returned April 1, 1921, at 10:20 A. M. J. A. Thompson, Clerk. [438]

In the Supreme Court of the Territory of Hawaii.

WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants in Error.

Praeceptum for Transcript of Record on Writ of Error.
To JAMES A. THOMPSON, Esquire, Clerk of the
Supreme Court of the Territory of Hawaii:

You will please prepare a transcript of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following pleadings, opinions, judgments and papers on file in said cause, to wit:

1. Petition for writ of error, Sept. 10, 1920.
2. Assignments of error, Sept. 10, 1920.
3. Summons, Sept. 10, 1920.

4. Bond on writ of error, Sept. 10, 1920.
5. Writ of error, Sept. 10, 1920.
6. Copy of decision of Hon. W. S. Edings, filed August 22, 1918.
7. Copy of exceptions by defendants (Morris Rosenbledt and Fred Harrison) to decision of W. S. Edings August 23, 1918.
8. Copy of Judgment Circuit Court, filed Sept. 4, 1918.
9. Copy of Clerk's minutes, Circuit Court, W. S. Edings, June 14, 17, 20, 28, July 1, Sept.
10. Copy of bill of complaint and attached thereto as exhibits thereof are the following:
 - Exhibit "A," copy of statement of account dated Dec. 5, 1914, Honolulu Skating Rink, Ltd., to Wong Wong, Dr., showing amount due of \$4,543.60,
 - and Exhibit "B," copy of notice of lien entitled in the Circuit Court, First Circuit, in a cause entitled "Wong Wong, Lienor, Morris Rosenbledt and Fred Harrison, Owners." [439]
11. Copy of term with return of service attached thereto.
12. Copy of answer by the defendants Morris Rosenbledt and Fred Harrison, filed January 20, 1916.
13. Copy of decision of Hon. C. W. Ashford on motion of defendants Morris Rosenbledt and Fred Harrison for nonsuit filed February 28, 1917.

14. Copy of exception by plaintiff to decision and judgment, February 28, 1917.
15. Copy of judgment, filed March 1, 1917.
16. Copy of notice by the defendant Morris Rosenbledt and Fred Harrison of presentation of decision and judgment filed April 10, 1920.
17. Copy of decision of Hon. C. S. Franklin, filed April 12, 1920.
18. Copy of judgment, filed April 12, 1920.
19. Copy of clerk's minutes before Hon. C. S. Franklin, under date of April 12, 1920.
20. Bill of exceptions in case No. 1176.
21. Bill of exceptions in case No. 1187.
22. Original transcript of evidence in two parts, No. 434.
23. Original transcript of evidence cause Lewers & Cooke vs. Wong Wong, No. 433.
24. Original bond on exceptions of the defendants Morris Rosenbledt and Fred Harrison, filed April 2, 1919;
25. Original deposition of Morris Rosenbledt and direct and cross interrogatories and commission issued May 23, 1916.
26. Plaintiff's Exhibit "A"—Contract dated Sept. 20, 1914, between Wong Wong and Skating Rink.
27. Plaintiff's Exhibit "A-1"—Specifications of materials and labor required and to be employed in the erection and completion of a one-story skating rink.
28. Plaintiff's Exhibit "A-2"—Plan of front elevation.

29. Plaintiff's Exhibit "A-3"—Plan of gallery to rink.
30. Plaintiff's Exhibit "B"—Original of notice of lien No. 216, filed in First Circuit Court Dec. 11, 1914, in cause entitled "Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners."
31. Plaintiff's Exhibit "C"—Order No. 1, dated Nov. 4, 1914, from Tom Gill, Architect, to Honolulu Skating Rink, Ltd., with assignment noted at the end thereof by Wong Wong to Lewers & Cooke, Ltd.
32. Plaintiff's Exhibit "D"—Statement of account, dated Nov. 6, 1914.
33. Honolulu Skating Rink, Ltd., to Wong Wong, Dr., for \$7,013.60.
34. Plaintiff's Exhibit "E"—Articles of incorporation of Honolulu Skating Rink.
35. Plaintiff's Exhibit "F"—Original lease dated Sept. 21, 1914, between Morris Rosenbledt and Fred Harrison and Honolulu Skating Rink recorded Liber 403, pages 376-381.
36. Plaintiff's Exhibit "G"—Copy of notice of lien entitled in a cause Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners.
37. Plaintiff's Exhibit "H"—A second copy of notice entitled in a cause Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners. [440]

38. Plaintiff's Exhibit "I"—Certified copy of Annual Corporation Exhibit of Honolulu Skating Rink for year ending December 31, 1914.
39. Defendant's Exhibit 1—Assignment dated Sept. 25, 1914, signed by Wong Wong to Lewers & Cooke of amount due on contract.
40. Defendant's Exhibit 2-1 to 2-4—Parts of "Star Bulletin," April 6, 20, May 4, May 19, 1917.
41. Defendant's Exhibit 3—Publication affidavit of J. S. Mailue Notice of Territory and order appointing trustee upon dissolution.
42. Defendant's Exhibit 4—Certified copy of decree of dissolution and appointment trustee of Honolulu Skating Rink, Ltd.
43. Defendant's Exhibit 5—Minute-book of Board of Directors of Honolulu Skating Rink from Sept. 14, 1914, to April 26, 1915.
44. Original notice of materialman's lien entitled in Circuit Court, First Circuit, in a cause entitled Lewers & Cooke, Ltd., Lienor, vs. Wong Wong, Contractor, Honolulu Skating Rink, Lessee, Morris Rosenbledt and Fred Harrison, owners.
45. Copy of opinion of Supreme Court, Jan. 25, 1921.
46. Copy of judgment of Supreme Court, Feb. 18, 1921.
47. Copy of bond on writ of error.

You will please annex and transmit with the record the original writ of error from the Ninth Circuit, and original citation with return of service,

your return of the writ of error under the seal of the Supreme Court of the Territory of Hawaii, and also your certificate under seal stating in detail the cost of the record and by whom paid.

Dated Honolulu, T. H., April 4th, 1921.

ROBERTSON, CASTLE & OLSON,
Attorneys for Plaintiffs in Error. [441]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Limited, a Corporation, et als., Defendants in Error. Praecept. Filed April 4, 1921, at 10:35 A. M. J. A. Thompson, Clerk. [442]

In the Supreme Court of the Territory of Hawaii.
WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED,
a Corporation, MORRIS ROSENBLÉDT
and FRÉD HARRISON,

Defendants in Error.

Order for Transmission of Original Exhibits.

To JAMES A. THOMPSON, Esquire, Clerk of the
Supreme Court of the Territory of Hawaii:

You are hereby authorized and directed in connection with the writ of error from the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to transmit as part of the record required by the praecipe of the plain-

tiff in error, the following exhibits, upon his counsel undertaking to return them to the files of this court, viz.:

1. Plaintiff's Exhibit "A"—Contract dated Sept. 20, 1914, between Wong Wong and Skating Rink.
2. Plaintiff's Exhibit "A-1"—Specifications of materials and labor required and to be employed in the erection and completion of a one story skating rink.
3. Plaintiff's Exhibit "A-2"—Plan of front elevation.
4. Plaintiff's Exhibit "A-3"—Plan of gallery to rink.
5. Plaintiff's Exhibit "B"—Original of notice of lien No. 216 filed in First Circuit Court Dec. 11, 1914, in cause entitled "Wong Wong, Lienor, v. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners."
6. Plaintiff's Exhibit "C"—Order No. 1, dated Nov. 4, 1914, from Tom Gill, Architect, to Honolulu Skating Rink, Ltd., with assignment noted at the end thereof by Wong Wong to Lewers & Cooke, Ltd.
7. Plaintiff's Exhibit "D"—Statement of account dated Nov. 6, 1914.
8. Honolulu Skating Rink, Ltd., to Wong Wong, Dr., for \$7013.60.
9. Plaintiff's Exhibit "E"—Articles of incorporation of Honolulu Skating Rink.

10. Plaintiff's Exhibit "F"—Original lease dated Sept. 21, 1914, between Morris Rosenbledt and Fred Harrison and Honolulu Skating Rink recorded Liber 403, page 376-381. [443]
11. Plaintiff's Exhibit "G"—Copy of notice of lien entitled in a cause Wong Wong, Lienor, v. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners.
12. Plaintiff's Exhibit "H"—A second copy of notice entitled in a cause Wong Wong, Lienor, v. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners.
13. Plaintiff's Exhibit "I"—Certified copy of Annual Corporation Exhibit of Honolulu Skating Rink for year ending December 31, 1914.
14. Defendant's Exhibit 1—Assignment, dated Sept. 25, 1914, signed by Wong Wong to Lewers & Cooke of amount due on contract.
15. Defendant's Exhibit 2-1 to 2-4—Parts of "Star Bulletin," April 6, 20, May 4, May 19, 1917.
16. Defendant's Exhibit 3—Publication affidavit of J. S. Mailue Notice of Territory and order appointing trustee upon dissolution.
17. Defendant's Exhibit 4—Certified copy of decree of dissolution and appointment trustee of Honolulu Skating Rink, Ltd.

18. Defendant's Exhibit 5—Minute-book of Board of Directors of Honolulu Skating Rink from Sept. 14, 1914, to April 26, 1915.
19. Original notice of materialman's lien entitled in Circuit Court First Circuit in a cause entitled Lewers & Cooke, Ltd., Lienor vs. Wong Wong, contractor, Honolulu Skating Rink, Lessee, Morris Rosenbledt and Fred Harrison, owners.

Dated, Honolulu T. H., this 4th day of April, 1921.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [444]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Ltd., a Corporation, Morris Rosenbledt and Fred Harrison, Defendants in Error. Order for Transmission of Original Exhibits. Filed April 4, 1921, at 11:25 A. M. J. A. Thompson, Clerk. [445]

In the Supreme Court of the Territory of Hawaii.
WONG WONG,

Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLEDT and
FRED HARRISON,

Defendants in Error.

Undertaking to Return Original Exhibits.

To JAMES A. THOMPSON, Esquire, Clerk of the
Supreme Court of the Territory of Hawaii:

We hereby undertake to return to the files of the Supreme Court of the Territory of Hawaii the following original exhibits, sent to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with the order of the Chief Justice of the Supreme Court of the Territory of Hawaii:

1. Plaintiff's Exhibit "A" — Contract dated Sept. 20, 1914, between Wong Wong and Skating Rink.
2. Plaintiff's Exhibit "A-1"—Specifications of materials and labor required and to be employed in the erection and completion of a one-story skating rink.
3. Plaintiff's Exhibit "A-2"—Plan of front elevation.
4. Plaintiff's Exhibit "A-3"—Plan of gallery to rink.
5. Plaintiff's Exhibit "B"—Original of notice of lien No. 216 filed in First Circuit Court Dec. 11, 1914, in cause entitled "Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners."
6. Plaintiff's Exhibit "C"—Order No. 1 dated Nov. 4, 1914, from Tom Gill, Architect, to Honolulu Skating Rink, Ltd., with assignment noted at the end thereof by Wong Wong to Lewers & Cooke, Ltd.

7. Plaintiff's Exhibit "D"—Statement of account dated Nov. 6, 1914.
8. Honolulu Skating Rink, Ltd., to Wong Wong, Dr., for \$7,013.60.
9. Plaintiff's Exhibit "E"—Articles of Incorporation of Honolulu Skating Rink.
10. Plaintiff's Exhibit "F"—Original lease dated Sept. 21, 1914, between Morris Rosenbledt and Fred Harrison and Honolulu Skating Rink recorded in Liber 403, [446] page 376-381.
11. Plaintiff's Exhibit "G"—Copy of notice of lien entitled in a cause Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners.
12. Plaintiff's Exhibit "H"—A second copy of notice entitled in a cause Wong Wong, Lienor, vs. Honolulu Skating Rink, Ltd., Lessee, Morris Rosenbledt and Fred Harrison, Owners.
13. Plaintiff's Exhibit "I"—Certified copy of Annual Corporation Exhibit of Honolulu Skating Rink for year ending December 31, 1914.
14. Defendant's Exhibit 1—Assignment dated Sept. 25, 1914, signed by Wong Wong to Lewers & Cooke of amount due on contract.
15. Defendant's Exhibit 2-1 to 2-4, Parts of Star Bulletin, April 6, 20, May 4, May 19, 1917.
16. Defendant's Exhibit 3—Publication affidavit of J. S. Mailue Notice of Territory and order appointing trustee upon dissolution.

17. Defendant's Exhibit 4—Certified copy of decree of dissolution and appointment trustee of Honolulu Skating Rink, Ltd.
18. Defendant's Exhibit 5—Minute-book of Board of Directors of Honolulu Skating Rink from Sept. 14, 1914, to April 26, 1915.
19. Original notice of materialman's lien entitled in Circuit Court, First Circuit, in a cause entitled Lewers & Cooke, Ltd., Lienor, vs. Wong Wong, Contractor, Honolulu Skating Rink, Lessees, Morris Rosenbledt and Fred Harrison, Owners.

Dated, Honolulu, April 4th, 1921.

ROBERTSON, CASTLE & OLSON. [447]

[Endorsed]: No. 1291. Supreme Court, Territory of Hawaii. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Ltd., a Corporation, Morris Rosenbledt and Fred Harrison, Defendants in Error. Undertaking to Return Original Exhibits. Filed April 4, 1921, at 11:25 A. M. J. A. Thompson, Clerk. [448]

In the Supreme Court of the Territory of Hawaii.
October Term, 1920.

ERROR TO CIRCUIT COURT, FIRST
CIRCUIT.

No. 1291.

WONG WONG,

Plaintiff and Plaintiff in Error,

vs.

HONOLULU SKATING RINK, LIMITED, a
Corporation, MORRIS ROSENBLDT and
FRED HARRISON,

Defendants and Defendants in Error.

**Certificate of Clerk to Transcript of Record and
Return to Writ of Error.**

Territory of Hawaii,
City and County of Honolulu,
United States of America,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, in obedience to the within writ of error, the original whereof is herewith returned, being pages 434 to 436, both inclusive, of the foregoing transcript of record, and in pursuance of the praecipe to me directed, a copy whereof is hereto attached, being pages 439 to 442, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 47, pages 80 to 254, pages 398 to 427, pages 431 to 433. and pages 446 to 448,

both inclusive, AND I CERTIFY the same to be full, true and correct copies of the pleadings, record, entries, clerk's minutes and final judgment which are now on file and of record in the office of the clerk of the Supreme Court of the Territory of Hawaii in the case entitled in said court, "Wong Wong, Plaintiff and Plaintiff in Error, vs. Honolulu Skating Rink, Limited, a Corporation, Morris Rosenbledt and Fred Harrison, Defendants and Defendants in Error," and numbered 1291. [449]

I FURTHER CERTIFY that pages 48 to 50, both inclusive, and pages 51 to 79, both inclusive, of the foregoing transcript of record are full, true and correct copies of the bills of exceptions which are now on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in the cases entitled as above and respectively numbered 1176 and 1187.

I FURTHER CERTIFY that pages 255 to 397, both inclusive, of the foregoing transcript of record, is a full, true and correct copy of the transcript of the testimony in the case entitled "Lewers & Cooke, Limited, vs. Wong Wong, et al.," and numbered 8142 in the Circuit Court of the First Circuit, and which transcript of testimony was offered in the above-entitled cause.

I FURTHER CERTIFY, that pursuant to an order herein filed, a copy whereof is hereto attached, being pages 443 to 445, both inclusive, I have included and do transmit herewith as part of the transcript of record in the foregoing entitled cause, the following original exhibits, viz.:

- (1) Plaintiff's Exhibit "A"—Contract dated September 20, 1914, between Wong Wong and Honolulu Skating Rink, Ltd.
- (2) Plaintiff's Exhibit "A-1"—Specifications of materials and labor required and to be employed in the erection and completion of a one-story skating rink for the Honolulu Skating Rink, Limited.
- (3) Plaintiff's Exhibit "A-2"—Plan of front elevation of the Honolulu Skating Rink.
- (4) Plaintiff's Exhibit "A-3"—Plan of the gallery of the Honolulu Skating Rink.
- (5) Plaintiff's Exhibit "B"—Original of notice of lien No. 216, filed in the Circuit Court First Circuit, December 11, 1914, in a cause entitled "Wong Wong, Lienor, vs. Honolulu Skating Rink, Limited, Lessee, Morris Rosenbledt and Fred Harrison, Owners."
- (6) Plaintiff's Exhibit "C"—Order Number 1, dated November 4, 1914, from Tom Gill, architect, to Honolulu Skating Rink, Limited, with assignment noted at the end thereof by Wong Wong to Lewers & Cooke, Limited.
- (7) Plaintiff's Exhibit "D"—Statement of account, dated November 6, 1914, Honolulu Skating Rink, Limited, to Wong Wong, Dr., for \$7,013.60.
- (8) Plaintiff's Exhibit "E"—Certified copy of Articles of Incorporation of Honolulu Skating Rink.
- (9) Plaintiff's Exhibit "F"—Original lease dated September 21, 1914, between Morris

Rosenbledt and Fred Harrison and Honolulu Skating Rink, recorded in Liber 403, pages 376-381. [450]

- (10) Plaintiff's Exhibit "G"—Copy of notice of lien entitled in the Circuit Court, First Circuit in a cause entitled "Wong Wong, Lienor, vs. Honolulu Skating Rink, Limited, Lessee, Morris Rosenbledt and Fred Harrison, Owners."
- (11) Plaintiff's Exhibit "H"—A second copy of notice of lien entitled in the Circuit Court First Circuit in a cause entitled "Wong Wong, Lienor, vs. Honolulu Skating Rink, Limited, Lessee, Morris Rosenbledt and Fred Harrison, Owners."
- (12) Plaintiff's Exhibit "I"—Certified copy of Annual Corporation Exhibit of Honolulu Skating Rink, for the year ending December 31, 1914.
- (13) Defendant's Exhibit "1"—Assignment dated September 25, 1914, signed by Wong Wong to Lewers & Cooke of amount due on contract.
- (14) Defendants' Exhibit "2-1 to 2-4"—Parts of the Honolulu "Star Bulletin," of dates, to wit: April 6, 20, May 4, 19, 1917.
- (15) Defendants' Exhibit "3"—Being publisher's affidavit, affidavit of J. S. Martin, notice of treasurer of the Territory, and order appointing trustee upon dissolution in the Matter of the Dissolution of the American-Oriental Company, Limited, an Hawaiian corporation.

- (16) Defendants' Exhibit "4"—Certified copies of decree of dissolution and appointment of trustee upon dissolution of Honolulu Skating Rink, Limited.
- (17) Defendants' Exhibit "5"—Minute-book of the Board of Directors of Honolulu Skating Rink from September 14, 1914 to April 26, 1915; and
- (18) Original notice of materialman's lien entitled in the Circuit Court, First Circuit, in a cause entitled "Lewers & Cooke, Limited, Lienor, vs. Wong Wong, Contractor, Honolulu Skating Rink, Lessee, Morris Rosenbledt and Fred Harrison, Owners."

I DO FURTHER CERTIFY that the original assignment of errors, being pages 428 to 430, both inclusive, and the original citation on writ of error, with admissions of service thereof, being pages 437 to 438, both inclusive, of the foregoing transcript of record, are hereto attached and herewith returned.

I LASTLY CERTIFY that the cost of the foregoing transcript of record is \$172.30, and the said amount has been paid by Messrs. Robertson, Castle & Olson, the attorneys for the plaintiff in error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 19th day of April, A. D. 1921.

[Seal] JAMES A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [451]

[Endorsed]: No. 3680. United States Circuit Court of Appeals for the Ninth Circuit. Wong Wong, Plaintiff in Error, vs. Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, Defendants in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed April 28, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

ERROR TO THE SUPREME COURT OF THE
TERRITORY OF HAWAII.

No. 3680.

WONG WONG,
Plaintiff and Plaintiff in Error,
vs.

HONOLULU SKATING RINK, LIMITED,
MORRIS ROSENBLEDT and FRED HARRISON,
Defendants and Defendants in Error.

**Stipulation Re Omission of Original Exhibits from
Printed Record.**

IT IS HEREBY STIPULATED by the parties hereto, the defendants in error reserving the ques-

tion of jurisdiction, that the exhibits under Rule 23 may be omitted from the printed record.

Dated, Honolulu, May 9th, 1921.

ARTHUR WITHINGTON,

Attorneys for Plaintiff in Error.

HONOLULU SKATING RINK, LIMITED,

By FRED OHRT,

Pres.

E. C. PETERS,

Attorneys for Morris Rosenbledt and Fred Harrison.

[Endorsed]: No. 3680. In the United States Circuit Court of Appeals for the Ninth Circuit. Wong Wong, Plaintiff and Plaintiff in Error, vs. Honolulu Skating Rink, Limited, Morris Rosenbledt and Fred Harrison, Defendants and Defendants in Error. Stipulation Under Rule 23. Filed May 17, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

